

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R05-90]

PREAMBLE

1. Sections Affected

R4-23-604
R4-23-605
R4-23-613
R4-23-1106

Rulemaking Action

Amend
Amend
Amend
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-1904(A)(1) and (2) and (B)(3)

Implementing statute: A.R.S. §§ 32-1925(I), 32-1929, 32-1930, 32-1931, and 32-1933

3. The effective date of the rules:

April 30, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 3191, August 13, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 3736, September 10, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 W. Olive Ave., Ste. 140
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Board staff noticed that the drug manufacturer and drug wholesaler rules in R4-23-604 and R4-23-605 do not contain the requirement for change of ownership or relocation as the rule for pharmacies does in R4-23-606. To improve the rules' consistency, clarity, and understandability, the proposed rules amend R4-23-604 and R4-23-605 to include subsections specifying the requirements for change of ownership and relocation. To improve the rules' consistency, clarity, and understandability, the proposed rules amend R4-23-613, Procedure for Discontinuing a Pharmacy, to change the required minimum notice given to the Board before discontinuing a pharmacy from 10 days to the 14 days required by the DEA. A discontinued pharmacy's records retention requirement is changed to seven years from three. The 2004 Legislature passed HB 2196. HB 2196 amends A.R.S. § 32-1925(I) to require that the Board not renew a pharmacy technician license unless the licensee has complied with Board-approved mandatory continuing professional education requirements. The proposed rules add a new Section R4-23-1106, Continuing Education Requirements. The new Section details the Board's continuing education requirements for pharmacy technicians. The rules include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers by clearly establishing the standards for pharmacy technician continuing

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education, discontinuing a pharmacy, and a drug manufacturer's or drug wholesaler's ownership change or relocation.

7. A reference to any study relevant to the rule that the agency reviewed and either relied 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:

None

8. A showing of good cause why the rule 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. The summary of the economic, small business, and consumer impact:

The proposed rules will impact the Board, drug manufacturers, drug wholesalers, pharmacies, pharmacists, and pharmacy technicians. The proposed rules' impact on the Board will be the usual rulemaking-related costs, which are minimal. The proposed rules will have little or no economic impact on drug manufacturers, drug wholesalers, pharmacists, or pharmacies. The rules will have minimal economic impact on pharmacy technicians. The rules require a pharmacy technician to obtain 20 contact hours of continuing education to renew the pharmacy technician's license. To become licensed by the Board, an individual must pass a Board-approved pharmacy technician licensure examination. The only examination presently approved by the Board is the Pharmacy Technician Certification Board (PTCB) examination. When an individual passes the PTCB examination, the person receives a PTCB certification. To maintain that certification, the person must complete 20 contact hours of continuing education. PTCB does not limit the continuing education hours to only Accreditation Council on Pharmacy Education (ACPE)-approved or Board-approved hours. Because all pharmacy technicians licensed by the Board are also certified by the PTCB and already complete continuing education hours to maintain their PTCB certification, a licensed pharmacy technician could incur additional cost to comply with the Board's continuing education requirements if the continuing education hours obtained are not provided by an approved provider. Board rules define an approved provider as someone who provides continuing education that is ACPE approved or Board approved. Any continuing education hours obtained by a pharmacy technician that are not provided by an approved provider could be used to recertify with PTCB, but those hours would not count for renewal of the pharmacy technician's Board license. A pharmacy technician could incur additional costs if the pharmacy technician has continuing education hours that are not from an approved provider. Since both PTCB and the Board accept ACPE-approved continuing education hours, the majority of pharmacy technicians will obtain ACPE-approved continuing education hours and not incur additional costs to satisfy both PTCB recertification and Board license renewal requirements. The average cost for continuing education hours is \$10 per hour. Many continuing education seminars are free to the attendee, because the cost is picked up by a sponsor. The most a pharmacy technician might have to pay for continuing education hours to satisfy the renewal requirements is \$200 per renewal. That \$200 is a cost a pharmacy technician is already paying to maintain the pharmacy technician's PTCB certification, so any additional cost for continuing education hours specifically for renewal of the Board license would be minimal. Other changes to the rules simply improve the clarity, conciseness, and understandability of the rules. The proposed rules have no economic impact on the public.

The public, Board, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers benefit from rules that are clear, concise, and, understandable. The proposed rules benefit the public, the Board, pharmacists, pharmacy technicians, pharmacies, drug manufacturers, and drug wholesalers by clearly establishing the standards for pharmacy technician continuing education, discontinuing a pharmacy, and a drug manufacturer's or drug wholesaler's ownership change or relocation.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There are no substantive changes in the final rules from the proposed rules. There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff. During review by G.R.R.C. staff, the Board staff noticed an error in the multiplier for pharmacy technician continuing education contact hours computation in R4-23-1106(A). The multiplier in the proposed rule was 1.25. The number of contact hours required by the rule was 20 contact hours and has not changed, but the multiplier as published in the notice of proposed rulemaking is incorrect for 20 contact hours. The correct multiplier should be 0.83. The pharmacist rule for continuing education (R4-23-204) was used to draft the pharmacy technician continuing education rule, the multiplier (1.25) for pharmacist's 30 contact hours of continuing education was inadvertently left in the rule, and the error was not caught earlier. The final rule is changed to include the correct multiplier, 0.83. This is not a substantive change.

11. A summary of the comments made regarding the rule and the agency response to them:

A public hearing was held on June 28, 2004. Janet Elliott representing The Arizona Community Pharmacy Committee attended the hearing to speak for the proposed rulemaking and provide a written statement from the committee expressing the committee's support of the proposed rulemaking. The Board received one other written comment from the Arizona Pharmacy Association (APA) expressing support for the proposed rulemaking. The APA's letter requested the Board to consider lowering the law continuing education requirement in the rule from two contact hours to one contact hour. The APA's letter states that the PTCB only requires one contact hour of law continuing education for technician recertification. The APA feels that the Board's two-hour law continuing education requirement will

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cause confusion for technicians. The APA's letter further states that the Board requirement that the continuing education contact hours be ACPE approved may cause the Board to receive numerous requests for approval of non-ACPE providers, because the PTCB does not require ACPE-approved continuing education units for technician recertification.

In a Board meeting held on November 12, 2004, the Board addressed the written comments from the APA. The Board members unanimously agreed that the law continuing education requirement for pharmacy technicians for Arizona should be two contact hours, because the one area where pharmacists and pharmacy technicians share responsibility is the application of pharmacy law. The Board members feel that knowledge of pharmacy law is just as important for pharmacy technicians as for pharmacists. The Board members do not feel that requiring two contact hours of law continuing education for pharmacy technicians is excessive. The Board members unanimously agreed that pharmacy technician continuing education hours should come from ACPE-approved providers. In R4-23-1106(a) as approved by the Board, pharmacy technician continuing education hours shall be sponsored by an approved provider as defined in R4-23-110. Approved provider means an individual, institution, organization, association, corporation, or agency that is approved by ACPE or the Board. To date, the Board has only approved continuing education hours for attendance at its Board meetings and specific law continuing education presentations made by its executive director or compliance officers. This does not mean that the Board could not eventually approve other pharmacy continuing education providers. The Board did make it clear that they believe the majority of a pharmacy technician's pharmacy continuing education hours should come from ACPE-approved providers.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

- R4-23-604. Resident Drug Manufacturer
- R4-23-605. Resident Drug Wholesaler Permit
- R4-23-613. Procedure for Discontinuing a Pharmacy

ARTICLE 11. PHARMACY TECHNICIANS

Section

- R4-23-1106. Continuing Education Requirements

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-604. Resident Drug Manufacturer

- A. No change
- B. No change
- C. No change
- D. Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, manager, or pharmacist-in-charge, including manager's or pharmacist-in-charge's telephone number. The resident drug manufacturer permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident drug manufacturer permittee comply with subsection (E).
- E. Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-604(B).
- F. Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final

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inspection by a Board compliance officer before operations begin.

~~G.~~ A resident drug manufacturer permittee shall submit the application packet described under subsection R4-23-604(B) for any change of officers in a corporation, excluding the fee and final inspection.

~~E-H.~~ No change

~~F-I.~~ No change

~~G-J.~~ No change

~~H-K.~~ No change

~~I-L.~~ No change

~~J-M.~~ No change

~~K-N.~~ No change

~~L-O.~~ No change

R4-23-605. Resident Drug Wholesaler Permit

A. No change

B. No change

C. Notification. A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, manager, or responsible person, including manager's or responsible person's telephone number. The resident full-service or nonprescription drug wholesale permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident full-service or nonprescription drug wholesale permittee comply with subsection (D).

~~D.~~ Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-605(B).

~~E.~~ Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection R4-23-605(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.

~~F.~~ A resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection R4-23-605(B) for any change of officers in a corporation, excluding the fee and final inspection.

~~D-G.~~ No change

~~E-H.~~ No change

~~F-I.~~ No change

R4-23-613. Procedure for Discontinuing a Pharmacy

A. A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least ~~40~~ 14 days before discontinuing operation of the pharmacy. The notice shall contain the following information:

1. No change

2. No change

3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of controlled substances and prescription-only drugs will be kept and the person responsible for the records. These records shall be kept for a minimum of ~~three~~ seven years from the last transaction date.

4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of ~~three~~ seven years from the date the last original or refill prescription was dispensed; and

5. No change

B. No change

C. No change

D. The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:

1. No change

2. No change

3. All controlled substances are transferred as follows:

a. No change

b. No change

c. Keep the original of the inventory with the discontinued pharmacy's records of drug purchase and disbursement for a minimum of ~~three~~ seven years from the date the pharmacy is discontinued;

d. No change

e. No change

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- E. No change
- F. During the ~~three~~ seven year record retention period, the person described in subsection (A)(3) or (4) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of controlled substances and prescription-only drugs, prescription files, and patient profiles.

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1106. Continuing Education Requirements

- A. General.** According to A.R.S. § 32-1925(I), the Board shall not renew a pharmacy technician license unless the applicant has during the two years preceding the application for renewal:
 - 1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider defined in R4-23-110, and
 - 2. At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date.
- B. Valid CEUs.** The Board shall:
 - 1. Only accept CEUs for continuing education activities sponsored by an Approved Provider;
 - 2. Only accept CEUs accrued during the two-year period immediately before licensure renewal;
 - 3. Not allow CEUs accrued in a biennial renewal period in excess of the required two CEUs to be carried forward to the succeeding biennial renewal period;
 - 4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
 - 5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.
- C. Continuing education records and reporting CEUs.** A pharmacy technician shall:
 - 1. Maintain continuing education records that:
 - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
 - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
 - 2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
 - 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D.** The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.
- E.** A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R05-91]

PREAMBLE

- | | |
|-----------------------------|---------------------------------|
| 1. Sections Affected | <u>Rulemaking Action</u> |
| Article 9 | New Article |
| R12-4-901 | New Section |
| R12-4-902 | New Section |
| R12-4-903 | New Section |
| R12-4-904 | New Section |
| R12-4-905 | New Section |
| R12-4-906 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)

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Implementing statute: A.R.S. § 17-299

3. The effective date of the rules:

April 30, 2005

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 981, March 12, 2004

Notice of Public Meeting on Open Rulemaking Docket: 10 A.A.R. 2613, June 25, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 4171, October 15, 2004.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Carlos Ramirez, Rulewriter

Address: Arizona Game and Fish Department DORR
2221 W. Greenway Rd.
Phoenix, AZ 85023-4399

Telephone: (602) 789-3288, ext. 206

6. An explanation of the rule, including the agency's reason for initiating the rule:

In November 2002, the voters of Arizona passed the Indian Gaming Initiative, Proposition (Prop) 202. Article 7 of this initiative establishes the Arizona Wildlife Conservation Fund. A.R.S. § 17-299(A) stipulates that the Arizona Game and Fish Commission shall administer the fund. Section 17-299(C) states, "All monies in the Arizona Wildlife Conservation Fund shall be spent by the Arizona Game and Fish Commission to conserve, enhance, and restore Arizona's diverse wildlife resources and habitat for present and future generations, and which may include the acquisition of real property. The Commission may grant monies to any agencies of the state or political subdivision, Indian Tribe, or non-profit organization exempt from federal taxation under Section 501(C) of the Internal Revenue Code for the purpose of conservation of wildlife for wildlife habitat or acquisition of real property or interest in real property that is wildlife habitat. A grant of money under this subsection to a non-profit organization is conditioned on the organization providing reasonable public access that is wholly or partly purchased with that money."

This rulemaking will establish a new Article 9 that prescribes the application process and general provisions of the Arizona Wildlife Conservation Fund Grant Program.

R12-4-901. Definitions

This rulemaking establishes definitions that assist the applicant in understanding the unique terms that are used throughout Article 9. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

R12-4-902. General Provisions

This rulemaking establishes the general provisions under which eligible applicants may file an application and seek funding under the provisions of the Arizona Wildlife Conservation Fund. Under this Section, the rulemaking addresses requirements that eligible applicants or participants must adhere to relative to a successful award, such as: definition of eligible applicants, notification to applicants of funds availability, information on land-tenure and control, information regarding reasonable public access, long term operation and maintenance of awarded projects, and requirements of successful applicants to give public notice of awarded funds. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

R12-4-903. Review of Proposals

This Section prescribes guidelines for the Department to review proposals and to explain contingencies of an awarded project due to substantive changes. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

R12-4-904. Grant Applications

This Section prescribes the processes and criteria that the applicant will follow and the information that the applicant will be required to include with the completed application forms. The applicant will be required to answer all questions relevant to the grant in the application submittal process. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

R12-4-905. Grant Agreements

This Section prescribes the minimum terms and conditions to which the participant has agreed to complete the awarded project. Significant requirements located in this Section include but are not limited to: a description of the grant agreement, documenting the scope of work of the awarded project, a provision that allows the parties to amend the approved scope of work, a process for transferring grant funds to a participant, requirements governing equipment purchase with grant funds, and the requirement that the participant obtain a current appraisal for acquisitions. The Department intends to establish criteria in this rule that allow for the extension of the project period. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

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R12-4-906. Reporting and Recordkeeping Requirements

This Section prescribes the requirement that a participant submit biannual project status reports to the Department. In addition, the participants will be required to maintain all books, accounts, reports, files, and other records relating to the acquisition and performance of the contract for a period of five years after completion of the contract. The Department has developed rule language consistent with the current Administrative Procedure Act requirements for rule-making language and style.

7. A reference to any study relevant to the rule that the agency reviewed and either relied 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:

None

8. A showing of good cause why the rule 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:

R12-4-901. Definitions
R12-4-902. General Provisions
R12-4-903. Review of Proposals
R12-4-904. Grant Applications
R12-4-905. Grant Agreements
R12-4-906. Reporting and Recordkeeping Requirements

This rulemaking will benefit the Department and those agencies of the state, Indian tribes, and non-profit organizations applying for Arizona Wildlife Conservation Fund Grants by providing the resources to conserve, enhance, and restore Arizona's diverse wildlife resources and habitats. However, the Department is limited in terms of its explanation of the economic, small business, and consumer impact because no data is readily available to the Department that would indicate the probable impact in quantitative terms. Therefore, the Department projects that the rulemaking could cost approximately \$50,000 for start-up and annual administration costs for the implementation and operation of the new rules.

Many of these funds may be expended to purchase goods and services from businesses in Arizona. Some of the businesses that could benefit from expenditure of these funds are construction companies, engineering firms, companies that supply high-tech equipment and computers, testing laboratories, scientific supply houses, lumber companies, archaeologists, consulting companies, sign companies, paper products companies, helicopter/flight service companies, fence companies, property appraisal companies, and landscaping companies. The expenditure of funds from the Arizona Wildlife Conservation Fund will have a very positive financial effect in terms of providing additional revenue opportunities for many businesses in the state.

There will not be any additional costs or reduction in revenues to businesses or non-profit organizations resulting from the adoption of these rules, and there is no anticipated effect on the revenues or payroll expenditures of employers who are subject to or affected by the adoption of the rulemaking.

The Department has determined that the benefits of this rulemaking outweigh any costs.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

One clarification and minor grammatical and stylistic changes were made at the request of G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 9. ARIZONA WILDLIFE CONSERVATION FUND GRANTS

Section

<u>R12-4-901.</u>	<u>Definitions</u>
<u>R12-4-902.</u>	<u>General Provisions</u>
<u>R12-4-903.</u>	<u>Review of Proposals</u>
<u>R12-4-904.</u>	<u>Grant Applications</u>
<u>R12-4-905.</u>	<u>Grant Agreements</u>
<u>R12-4-906.</u>	<u>Reporting and Recordkeeping Requirements</u>

ARTICLE 9. ARIZONA WILDLIFE CONSERVATION FUND GRANTS

R12-4-901. Definitions

In addition to the definitions provided in A.R.S. §§ 17-101 and 41-2701, the following definitions apply to this Article:

1. "Administrative subunit" means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant that has a representative. For example, an individual school, but not an entire school district; an individual field office or project office, but not an entire agency; or an individual administrative department, but not an entire city government.
2. "Application" means an eligible applicant's written request for a grant.
3. "Arizona Wildlife Conservation Fund prioritization" means the granting priorities, prescribed by the Commission, based upon the Department mission statement, strategic plans, and current guiding statements that define the Department's priorities, to the extent that these priorities are consistent with A.R.S. § 17-299.
4. "Commission" means the state Game and Fish Commission.
5. "Department" means the state Game and Fish Department.
6. "Eligible applicant" means any state agency, political subdivision, Indian tribe, or non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code that has met the requirements of this Article and not obtained an extension of the project period under R12-4-905(6).
7. "Facilities" means capital improvements.
8. "Fund" means the Arizona Wildlife Conservation Fund, established by A.R.S. § 17-299.
9. "Grant agreement" means the document that memorializes terms and conditions of a grant project that are binding on the participant and the Department.
10. "Grant effective date" means the date the Director of the Department signs the grant agreement.
11. "Participant" means an eligible applicant that has been awarded a grant from the fund.
12. "Pre-agreement costs" means costs identified within the scope of work and incurred by an applicant before an application is submitted.
13. "Project" means an activity, series of related activities, or services that are described in the scope of work and result in a specific end product.
14. "Project period" means the time during which a participant shall accomplish all approved work and related expenditures associated with an approved project.
15. "Representative" means an individual who is authorized to represent an eligible applicant or an administrative subunit and is responsible for administering a project.
16. "Scope of work" means the written description or units of work to be accomplished during the project period.

R12-4-902. General Provisions

- A. The Department shall receive grant applications according to a schedule of due dates determined by the Director. The Director shall ensure that the schedule complies with A.R.S. Title 41, Chapter 24, Article 1. The Department shall provide public notice of the time, location, and due date for application submission. After providing public notice, the Department shall furnish materials necessary to complete the application.
- B. Any state agency, political subdivision, Indian tribe, or non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code may apply for a grant from the fund in accordance with A.R.S. § 17-299 and this Article.
- C. A participant shall not begin a project until after the grant effective date. A participant shall complete the project as specified under the terms and conditions of the grant agreement.
- D. The Department shall announce grant awards 30 days after the Commission reviews and acts on the Department's recommendations at a regularly scheduled public meeting, and notify each applicant of the result.
- E. An applicant shall demonstrate control of land or waters where projects are to be completed by providing documentation of a fee title, lease, easement, land use agreement, or similar evidence of control for the purposes of conservation enhancement, restoration, or public access that is sufficient to meet the terms and conditions in the grant agreement, and complies

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with A.R.S. § 17-299(C). The Department shall determine whether or not similar evidence of control and tenure of land or waters that the applicant submits with an application is sufficient during the grant application review process.

- F. In accordance with A.R.S. § 17-299, a non-profit participant shall provide evidence of reasonable public access to any land that is wholly or partly purchased with grant monies.
- G. A participant shall operate and maintain properties, facilities, equipment, and services funded by a grant for the benefit of the public as required under A.R.S. § 17-299 and the terms and conditions of the grant agreement.
- H. A participant shall provide public acknowledgment of the Arizona Wildlife Conservation Fund for the life of a project. If a project involves acquisition of property or improvements, development of public access, or renovation of a habitat site, the participant shall install a permanent sign that describes the Fund at the project site. The participant may include the cost of the sign as part of the project, but shall pay for maintenance or replacement of the sign through non-grant monies, if necessary. For other project types, a participant shall provide a substantially similar form of Fund acknowledgement.
- I. A participant shall not use grant monies to replace monies already budgeted for the project. The Department shall review each application to ensure that grant monies for proposed projects will not replace existing monies from another source.
- J. The Department has the authority to require an eligible applicant or a participant to provide evidence of compliance with local, state, and federal laws that are applicable to a project before the release of grant monies or project implementation.
- K. In accordance with A.R.S. Title 41, Chapter 24, an unsuccessful applicant may submit an appeal.
- L. An applicant that does not comply with the terms or conditions of a grant agreement is not eligible to apply for other grants until the applicant's project is brought into compliance.
- M. If a representative has a grant-funded project that has been extended under R12-4-905, an administrative subunit that employs the representative is not eligible to apply for other grant monies until the project is completed.
- N. If applicable, an applicant shall comply with A.R.S. Title 41, Chapter 4.2 (Historic Preservation), and provide evidence to the Department that the applicant has satisfied all the necessary requirements of these statutes.

R12-4-903. Review of Proposals

- A. Grant proposals are competitive, and the Department shall recommend awards based on a proposed project's compatibility with the priorities of the Department and the project's costs, benefits, feasibility, relative merit, and usefulness, to the extent that these priorities and factors are consistent with A.R.S. § 17-299. The Department shall evaluate and rank all proposals using the criteria established in this subsection and A.R.S. § 17-299.
- B. If applicable, the Department shall make funding of an awarded project contingent upon revision of the application if the Department determines that substantive changes are necessary for the successful completion of the project. In these cases, the applicant shall provide the information requested within 10 working days from the date on the notification provided by the Department.

R12-4-904. Grant Applications

- A. To be eligible for a grant, an applicant shall submit a grant application in accordance with the schedule described in R12-4-902.
- B. An applicant shall submit an original and one copy of each application.
- C. The Department does not accept facsimile or "faxed" copies of a grant application.
- D. An applicant shall provide the following information on the grant application form:
 - 1. The name of the applicant;
 - 2. The name, title, mailing address, and telephone number of the applicant's representative;
 - 3. If subsection (D)(2) does not apply, provide the name, title, address, and telephone number of the individual who will have the day-to-day responsibility for the proposed project;
 - 4. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
 - 5. A descriptive project title;
 - 6. The name of the site, primary location, and any other locations of the project;
 - 7. A clear and concise description of the scope of work and the objective of the proposed project; the nature of the project; the methods for achieving the objective; and the desired result of the project;
 - 8. A map that clearly identifies the project location, locations, or area and if applicable, a site plan and floor plan;
 - 9. The beginning and ending dates for the project; and
 - 10. The resources that will be needed to accomplish the project, including the grant monies requested, and if applicable, evidence of secured matching funds or contributions.
- E. If the applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, the applicant shall also submit documentation or other evidence of its exemption.
- F. An applicant or the applicant's representative shall provide documentation to the Department of the representative's authority to execute a grant agreement.
- G. An applicant shall provide evidence of control and tenure of the project site with the application by submitting the following information:
 - 1. If applicable, evidence that legal and reasonable physical access to the subject property or lands exists;

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2. If the project site is owned by the applicant, a copy of all documents showing title in the name of the applicant and the legal description of the property;
 3. If the project site will be managed by the applicant, a copy of the lease, special use permit, intergovernmental agreement, or other official instrument or documentation; or
 4. For project proposals that relate to sites not directly controlled by the applicant, a copy of the permit or agreement that allows the project or evidence of permission for public access from the land owner or manager.
- H.** An applicant shall submit an estimated cost sheet for the scope of work that contains the following information:
1. Project title, as designated on the application form;
 2. If applicable, pre-agreement costs to be used as a match. These costs are only to be applied as matching dollars and not to be considered for funding under the grant;
 3. If applicable, all estimated costs for the scope of work, including an itemized list of work projects with a separate description of the costs of work that are necessary to achieve the desired result, the costs of secondary activities, and the total cost;
 4. If applicable, a list of all land parcels to be acquired, in priority order, with the acreage involved and anticipated dates of acquisition;
 5. The hourly rate, title, and name of personnel who will accomplish the project objectives; and
 6. The total cost for the entire project proposal with each of the following amounts listed separately:
 - a. Grant monies requested;
 - b. Applicant match for the project, if applicable; and
 - c. Any other sources of funding.
- I.** As part of the application process, an applicant shall answer all questions relevant to the grant and to the Arizona Wildlife Conservation Fund prioritization.

R12-4-905. Grant Agreements

Before the Department will transfer any monies, a participant shall sign a grant agreement that includes the following terms and conditions:

1. A participant shall use awarded grant monies solely for the purposes defined in A.R.S. § 17-299, as approved by the Department. The participant shall not exceed the grant allocation unless the parties amend the grant agreement.
2. The Department shall transfer awarded grant monies, less 10 percent, to the participant within one year of the grant effective date. The Department shall transfer the remaining 10 percent, less any adjustment for actual expenditures, upon receipt of a written request and a certification of project completion from the participant, unless the participant violates state law or the grant agreement.
3. The Department has the authority, under the grant agreement, to perform completion inspections and reviews of an awarded project or projects before release of final payment.
4. A participant shall deposit transferred grant monies into a bank account for each project, under the name and number of the project. The participant shall expend monies and interest from the account only as authorized under the terms of the grant agreement. The participant shall maintain a list of itemized expenditures.
5. A participant shall submit project status reports, as required by R12-4-906. The Department shall not make any grant payment until the participant has submitted all past due project status reports.
6. If both parties agree, the Department and the participant may amend the grant agreement. During the project period, the participant may submit a written request and justification to amend the agreement.
7. The Department shall prepare any approved amendment in writing, and both the Department and the participant shall sign the amendment. An amendment that lacks a required signature is invalid.
8. Notwithstanding subsection (6), the Department has the authority to extend the project period for good cause.
9. Upon completion of the awarded project, a participant shall return to the Department any unused monies. The participant may make a written request that the Department award the unused monies for an additional project that is consistent with the original scope of work.
10. If a participant violates state or federal law or the grant agreement, the Department shall seek recovery of all monies awarded and classify the participant as ineligible for grant monies for a period that does not exceed five years.
11. If applicable, a participant shall operate and maintain grant-assisted capital improvements, provide reasonable protection of any project improvements, and ensure that reasonable public access is maintained as specified in the grant agreement.
12. If a participant contracts with a third party or subcontractor, the participant is responsible for compliance with the grant agreement provisions if the third party or subcontractor defaults or violates any terms or conditions of the grant agreement.
13. The project period is two years from the grant effective date unless otherwise agreed upon by the Department and the participant.
14. A participant shall use equipment purchased with grant funds in a manner consistent with the purposes of the grant agreement, for the useful life of the equipment, or surrender the equipment to the Department upon completion of the project if the equipment has an acquisition cost of more than \$500. If the equipment is sold, the participant shall pay

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to the Department the amount of any proceeds according to a ratio equivalent to the Department's share of funds provided for the purchase.

15. A participant shall ensure that the value of real property purchased with grant assistance is appraised by a state certified appraiser within six months before the acquisition, in accordance with the Uniform Standards of Professional Appraisal Practice. The Department has the authority to select an appraiser for an independent evaluation if the Department has evidence that the participant's appraised value of the real property is not accurate.
16. Notwithstanding subsection (3), the Department has the authority to conduct inspections to ensure compliance with all terms and conditions of the grant agreement.
17. The Department has the authority to inspect or audit participant and subcontractor records based on verified complaints or evidence that indicates the need for an inspection or audit. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records. The participant is responsible for the acceptable performance of a subcontractor under each subcontract.
18. A participant shall not use grant monies for the purpose of generating income. If the participant generates income from a project, the participant shall use the money to pay costs of the project.

R12-4-906. Reporting and Recordkeeping Requirements

- A.** A participant shall submit biannual project status reports to the Department that describe ongoing and completed activities for the project period, unless another method of reporting is specified in the grant agreement. The participant shall include in the biannual report the following:
 1. Progress towards completing approved work;
 2. An itemized, cumulative project expenditure sheet;
 3. Any anticipated delays or other problems that may prevent on-time completion of the project; and
 4. Any additional information from the participant that the Department has the authority to request in accordance with the grant agreement.
- B.** Each participant shall retain and contractually require each subcontractor to retain all books, accounts, bank statements, reports, files, and other records that pertain to the acquisition and performance of the contract for a period of five years after completion of the contract.