

**Arizona Game and Fish Commission
2016 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 7. HERITAGE GRANTS**

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



ARIZONA GAME AND FISH COMMISSION
12 A.A.C. 4, ARTICLE 7. HERITAGE GRANTS
2016 FIVE-YEAR REVIEW REPORT

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REPORT - ARTICLE 7. HERITAGE GRANTS

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 7, Heritage Grants, are scheduled to be reviewed by February 2016.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 7. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff; no comments were received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

The Department also certifies it's compliance with the requirements of A.R.S. § 41-1091. The Department certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086;
3. The Department has included the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements online at azgfd.gov and makes them open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086.

R12-4-701. HERITAGE GRANT DEFINITIONS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4, Article 7. The rule was adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the definitions are understandable and applicable. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

- 6. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to repeal "sensitive elements" as the rule that contained the term is recommended for repeal.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The following comment was submitted in response to the Notice of Proposed Rulemaking, 18 A.A.R. 2463, October 5, 2012:

Written Comment: November 05, 2012. The Willow Creek Riparian Preserve, Inc. is a for-profit habitat conservation and preservation organization developed to specifically begin the process and actively manage natural resources within the Willow Creek watershed approximately 30 miles east of Kingman. We would like to request that for-profit organizations, that are qualified, be added to the definition of those that can apply for both the Heritage Grant Program funds and the Arizona Wildlife Conservation Fund Grant program (see sections referenced above). We are currently in the process of creating one of the first ACOE mitigation banks in the State of Arizona and although this process will be a lengthy one there should be no reason that we should incur the full financial burden of continued habitat and natural resource protection within Willow Creek (we took out a second mortgage on our home in order to purchase the first 10 acres on Willow Creek). We have already partnered with the Commission on many aspects of our endeavors to conserve and protect our vanishing riparian system in this watershed. We would like to be able to continue this partnering to full effect through the application process in being able to obtain this vital grant funding.

Revised Agency Response: Arizona voters created the Heritage Fund in 1990, designating up to \$10 million a year from lottery ticket sales for the conservation and protection of the state's wildlife and natural areas. The Arizona Game and Fish Commission spends its voter-approved Heritage Fund dollars to recover threatened and endangered species, to help urban residents appreciate and coexist with our unique wildlife, to educate children about the environment, and to create new opportunities for outdoor recreation. While the Commission supports restricting Heritage Grant funding to public agencies and non-profit organizations, the Commission does enter into agreements with for-profit businesses when doing so is in the best interest of the public (which can include providing funding); as in October 2008 when the Department funded fencing materials to construct exclusion and wildlife-friendly fencing on the Willow Creek Riparian Preserve.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove definitions already provided in statute and reword or add definitions. The Commission anticipated the proposed amendment would have little or no impact on the regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4, Article 7. The rule was

adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules. However, the Department proposes to amend the rule to add non-governmental organizations to the definition of "eligible applicant" to expand opportunities for Heritage Grant funds to additional applicants and remove the stipulation that an eligible applicant cannot have a Heritage Fund Grant in extension to make the rule more concise, because this stipulation is addressed under R12-4-702. In addition, the Department proposes to amend the rule to remove the stipulation that an eligible applicant who is a nonprofit organization must be sponsored by a public agency and include "administrative subunit" in the definition of "public agency." The Department anticipates these amendments will reduce the burden on nonprofits and state agency sponsors and make the process more efficient by removing administrative levels. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-701 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-702. GENERAL PROVISIONS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rule is to establish the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. The Heritage grants are supported by revenue from Arizona Lottery sales and are available for projects that focus on wildlife, including wildlife education, schoolyard habitats, and wildlife conservation efforts. Potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, the Department proposes to amend the rule to allow a participant to deposit Heritage Grant Funds to an interest bearing account, provided the earned interest is used to further the project or returned to the Department upon completion of the project. This is proposed to reduce the burden on the regulated community.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to clarify potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat. In addition, the Department proposes to amend the rule to incorporate the requirements under R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 into this rule to streamline and restructure

the rule to provide those requirements in chronological order for ease of understanding. As a result, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 will be repealed.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. Because the proposed amendments were either nonsubstantive in nature or rule language previously included in other Article 7 rules, the Commission anticipated the proposed amendment would benefit the regulated community and the Department by clarifying Heritage Grant requirements. The rule was amended to:

- Update group applicant and participant responsibilities to eliminate redundancy and improve clarity;
- Direct eligible applicants to the Grant application materials for the most up-to-date project information; require applicants to provide written permission from property owners authorizing project activities and public access, when applicable for eligibility;
- Eliminate the requirement that proposals be over \$1000;
- Require the participant's project to be in compliance and void of extensions before applying for any future Heritage Grants;
- Require participants to bear full responsibility for acceptable performance by subcontractors (not a new requirement, previously included in other Article 7 rule);
- Require the participant to deposit Heritage Grant Funds in a dedicated non-interest bearing account (previously included in other Article 7 rule);
- Specify a participant shall only use awarded Heritage Grant Funds for eligible purposes (previously included in other Article 7 rule);
- Specify a participant shall use State equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement (previously included in other Article 7 rule);
- Require a participant to surrender to the Department any equipment with an acquisition cost of more than

\$500 upon completion of the project (previously included in other Article 7 rule);

- Prohibit a participant from using Heritage Grant funds to pay any portion of a public employee's salary (previously included in other Article 7 rule);
- Require a participant to allow Department employees or agents to conduct inspections and reviews to ensure compliance with all Grant Agreement terms and conditions before release of the final payment (previously included in other Article 7 rule);
- Require a participant to return any remaining unused awarded Heritage Grant funds upon completion of an approved project, unless the Department approved use of those funds for an additional project (previously included in other Article 7 rule);
- Specify restrictions and limitations for use of funds to produce income, unless authorized by the Department (previously included in other Article 7 rule);
- Establish the Department may audit participant and subcontractor records (previously included in other Article 7 rule); and
- Establish the participant is accountable for the subcontractor's performance (previously included in other Article 7 rule).

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

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- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. Heritage Fund money comes from Arizona Lottery ticket sales and was established by voter initiative in 1990. The Heritage Fund Grant Program was established by the Arizona Game and Fish Department in 1992 as part of the overall Heritage Fund program and was initially developed as a way to promote outreach, enhance important partnerships, and generate fresh approaches in support of the Department's mission. Since inception, the Department has had the opportunity to award more than \$15 million through the Heritage Fund grants program and support more than 790 projects throughout the state. Applicants and successful grant recipients bear the administrative costs of complying with the provisions, including provisions on the disposal of equipment acquired with grant funding, and the administrative burdens of monitoring and reporting to the Department regarding the use of those funds. To protect Heritage Fund money from potential misuse, the Department must require information and documentation sufficient to ensure that the person submitting the application is an eligible applicant and the proposed project is eligible for grant funds. The Department proposes to amend the rule to prohibit a participant from comingling grant funds with any other funds. The Department estimates the costs and burdens resulting from the rule requirements for both applicants and recipients are not significant and do not deter applications. The rule is beneficial to the regulated community and the public directly impacted, as they enforce the beneficial use of the grants, while protecting them from misuse. It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for the Heritage Grant. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-702 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-703. HERITAGE GRANT PROGRAM FUNDS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rule is to establish the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program Funds. The rule was adopted to provide grant applicants with specific guidance for goals and objectives listed within each grant sub-category. The Heritage Fund is used to protect endangered species, acquire habitat for the benefit of sensitive species, provide access to outdoor recreational opportunities, and educate children and adults about wildlife. Because the department receives no state tax dollars to cover its operating budget, the Heritage Fund is critical to recovering or sustaining Arizona's unique native wildlife and to managing more than 800 species. Initially, separate Heritage Grant Fund rules were adopted; however, the most recent rulemaking combined those rules into one overarching rule, Heritage Grant Program Funds.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Heritage Funds are used to support activities in six primary areas, each of which may have one or more projects: Environmental Education; Identification, Inventory, Acquisition, Protection, and Management (IIAPM); Outdoor Education; Public Access; Schoolyard Habitat; and Urban Wildlife. However, the Department proposes to repeal the rule to provide the Department with greater flexibility in granting heritage funds in compliance with the manner prescribed under A.R.S. § 17-298.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to renumber and combine the previous grant fund rules into one overarching rule, Heritage Grant Program Funds. The Commission

anticipated the amendments would benefit the regulated community and the Department by providing Heritage Grant Fund Program information in one concise rule.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program Funds. The rule was adopted to provide grant applicants with provide specific guidance for goals and objectives listed within each grant sub-category. Heritage funding goes toward conservation efforts such as protecting endangered species, educating students and the general public about wildlife and the outdoors, and creating new opportunities for outdoor recreation. In the 2015 grant cycle, total of 48 Heritage Grant applications were received and, of the \$432,000 available, \$408,092 was awarded as follows: Environmental Education (EE) of the four applications received, three applicants were awarded EE grants totaling \$23,591 of the \$24,000 available; Outdoor Education (OE) of the six applications received, five applicants were awarded OE grants totaling \$7,920 of the \$8,000 available; Schoolyard Habitat (Schoolyard) of

the eleven applications received, five were awarded Schoolyard grants totaling \$37,500 of the \$37,500 available; Urban Wildlife (Urban) of the ten applications received, five applicants were awarded Urban grants totaling \$112,500 of the \$112,500 available; Public Access (Access) of the three applications received, three applicants were awarded Access grants totaling \$50,000 of the \$50,000 available; and Identification, Inventory, Acquisition, Protection and Management (IIAPM) of the fourteen applications received, four applicants were awarded IIAPM grants totaling \$176,581 of the \$200,000 available. The Department proposes to repeal the rule to provide the Department with greater flexibility in granting heritage funds in compliance with the manner prescribed under A.R.S. § 17-298. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-703 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-704. GRANT APPLICATION

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rulemaking is to establish the application process, criteria, and information that the applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage Fund grants.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the

authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant application requirements. The rule was amended to:

- Revise the title;
- Remove the number of copies an applicant is required to submit to the Department;
- Remove the requirement that an applicant submit a completed checklist; and
- Require an applicant to provide supporting information when applicable.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the application process, criteria, and information that the applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage Fund grants. Since inception, the Department has awarded more than \$15 million through the Heritage Fund grants program to support more than 790 projects throughout the state. To protect Heritage Fund money from potential misuse, the Department must require information and documentation sufficient to ensure that the person submitting the application is an eligible applicant and the proposed project is eligible for grant funds. The Department estimates the costs and burdens resulting from the rule requirements for both applicants and recipients are not significant and do not deter applications. The Department proposes to amend the rule (R12-4-702) to remove the requirement that a nonprofit provide proof of their tax exempt status. As a result of this review, the Department determined that this requirement is unnecessary because the rule does not require a nonprofit to have tax exempt status in order to qualify for a Heritage Fund grant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

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

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

The Department proposes to amend R12-4-704 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-705. REVIEW OF PROPOSALS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rulemaking is to establish the Department's guidelines for the review of proposals. The rule was adopted to notify the regulated community that grant awards are made available through a competitive application process. Applications are not evaluated, compared or scored against each other, but are reviewed and judged on the basis of their compatibility with goals, needs, and priorities of the Arizona Game and Fish Department, project feasibility, merit, and usefulness of results consistent with the conservation and management of wildlife and their habitats. All applications received by the deadline date will undergo an initial pre-screening process by Department staff as they are received. Applications successfully pre-screened, will transition to the grant proposal review and scoring process. If the Department feels an application proposal is better aligned within a different Heritage Grant Program Fund, the proposal is moved to that category for evaluation and scoring, and the applicant notified. The Department establishes evaluation scoring teams, comprised of three to five subject matter experts. The Scoring Team's evaluate and score each individual proposal against established evaluation criteria.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective. In addition, the majority of proposals make it through the initial review, very few are rejected. In 2015, of the 48 proposals received, only 2 were rejected for noncompliance. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining

consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to specify the award of Heritage Grant funds are based on a proposed project's compatibility with Department priorities. The Commission anticipated the proposed amendment would benefit the regulated community and the Department by clarifying Heritage Grant proposals review requirements.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the Department's guidelines for the review of proposals. The Department may require persons regulated by the rule to modify an application in order to receive grant funds. Examples of required modifications include, but are not limited to: collecting additional data related to the project, adding species specific guidelines, and signage requirements. The only other option available to the Department is to return the application to the applicant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-705 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-706. STATE HISTORIC PRESERVATION OFFICE REVIEW

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 41-861 and 41-864

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

The objective of the rulemaking is to notify applicants that Heritage Grant Funds shall not be released until after the Department has consulted with the State Historic Preservation Office and has determined that the project proposal will not have a negative impact on the state's prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act policies, (A.R.S. §§ 41-861 through 865) and the Arizona Antiquities Act (A.R.S. §§ 41-841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries, and are a condition and precedent to the award of any grant funds.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule title was revised to clarify the State Historic Preservation Office's role and the rule was amended to make the rule more concise. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rulemaking is to notify eligible applicants that the Department shall not release Heritage Grant Funds until after the Department has consulted with the State Historic Preservation Office and has determined that the project proposal will not have a negative impact on the state’s prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act policies, (*A.R.S.* §§ 41–861 through 865) and the Arizona Antiquities Act (*A.R.S.* §§ 41–841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries, and are a condition and precedent to the award of any grant funds. The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

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

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

The Department proposes to amend R12-4-706 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-707. GRANT AGREEMENT

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rulemaking is to establish the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage Fund Grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage Fund Grant.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review,

Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. The rule states the Department has the sole discretion to amend a Grant Agreement, which implies the participant is not allowed to provide any input in amending an agreement. This is not an accurate portrayal of the process as the participant may also make recommendations when amending an agreement and both parties are required to sign the amendment. The Department proposes to amend the rule to clarify the grant amendment process. In addition, the term "default" is somewhat ambiguous; the Department proposes to amend the rule to replace the term "default" with "not in compliance." However, the Department proposes to repeal the rule and incorporate its requirements and the proposed amendments into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant agreement requirements. The rule was amended to:

- Remove language stating a participant shall not exceed the Heritage Grant allocation unless the parties amend the Grant;
- Remove language stating that once program funds are allocated, the only funds remaining are made up of the 10% withheld by the Department to be released once a project is completed;
- Provide the Department with greater latitude when seeking recovery of grant monies; and
- Transfer provisions to the General Provisions rule that are more appropriately considered general provisions rather than grant conditions or stipulations.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage Fund Grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage Fund Grant. The Department must place some requirements on a participant sufficient to ensure that funds are used appropriately and the project is carried out as specified in the Grant Agreement to protect the funds from misuse. It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for the Heritage Grant. The Department proposes to amend the rule (R12-4-702) to allow the Department to extend the project period to complete the final closure documents to reduce the burden on the Department. The Department anticipates extending the project period to complete final closure documents the will have no significant impact on the participant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-707 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-708. REPORTING AND RECORDKEEPING REQUIREMENTS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297, 17-298, 17-298.01, and 35-214

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

The objective of the rulemaking is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the

rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to include additional financial reporting requirements; clarify compliance certification and record retention requirements; and establish participants are required to deposit grant funds in a non-interest bearing account. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant recordkeeping and reporting requirements.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting

the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rulemaking is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement. The rule is beneficial to the regulated community and the public directly impacted, as they enforce the beneficial use of the grants, while protecting them from misuse. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

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

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

The Department proposes to amend R12-4-708 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.