



**NOTICES OF PROPOSED RULEMAKING**

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) MEDICARE PART D PRESCRIPTION COVERAGE EXTRA HELP SUBSIDY PROGRAM**

[R16-54]

**PREAMBLE**

- | <b><u>1. Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|---|---------------------------------|
| R9-30-201   | Amend                           |
| R9-30-202   | Repeal                          |
| R9-30-203   | Amend                           |
| R9-30-204   | Repeal                          |
| R9-30-204   | New Section                     |
| R9-30-205   | Repeal                          |
| R9-30-206   | Repeal                          |
| R9-30-207   | Amend                           |
| R9-30-208   | Repeal                          |
| R9-30-209   | Amend                           |
| R9-30-210   | Repeal                          |
| R9-30-211   | Repeal                          |
| R9-30-212   | Amend                           |
| R9-30-213   | Amend                           |
| R9-30-214   | Amend                           |
| R9-30-215   | Amend                           |
| R9-30-216   | Amend                           |
| R9-30-218   | Amend                           |
| Article 4   | Repeal                          |
| R9-30-401   | Repeal                          |
| R9-30-402   | Repeal                          |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. §§ 36-2903(O) and 36-2903.01(F)  
 Implementing statute: A.R.S. § 36-2907(A)(4)
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
 Notice of Rulemaking Docket Opening: 22 A.A.R. 824, April 15, 2016 (*in this issue*).
- 4. The agency’s contact person who can answer questions about the rulemaking:**  
 Name: Mariaelena Ugarte  
 Address: AHCCCS  
 Office of Administrative Legal Services



701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034

Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.gov

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

The proposed rulemaking will amend and clarify rules to ensure consistency with federal requirements. In part, the rules will be revised to specify that “in kind support” and “maintenance” are not counted as part of the income calculation for purposes of eligibility determination. The current rules will also be amended to state that the value of any life insurance policy is not counted as part of the resource calculation. These provisions are necessary to comply with federal eligibility requirements. Consolidation of rules containing the same subject matter for conciseness, better organization, and improved understanding will be proposed. Technical changes such as cross-reference updates and general clarifying changes will be made along with removal of antiquated language.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:**

A study was not referenced or relied upon when revising these regulations.

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

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Administration anticipates no economic impact on the implementing agency, small businesses and consumers since this rulemaking is intended to provide conciseness and alignment with current federal regulations. The changes made are currently in practice.

**9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Proposed rule language will be available on the AHCCCS website www.azahcccs.gov the week of April 4, 2016. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., May 23, 2016.

Date: May 23, 2016

Time: 1:30 p.m.

Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034

Nature: Public Hearing

Date: May 23, 2016

Time: 1:30 p.m.

Location: ALTCS: Arizona Long-Term Care System  
1010 N. Finance Center Dr., Suite 201  
Tucson, AZ 85710

Nature: Public Hearing

Date: May 23, 2016

Time: 1:30 p.m.



Location: 2717 N. 4th St., Suite 130  
 Flagstaff, AZ 86004  
 Nature: Public Hearing

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

No other matters have been prescribed.

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

Not applicable

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

Not applicable

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

No analysis was submitted.

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

None

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
 MEDICARE PART D PRESCRIPTION COVERAGE EXTRA HELP SUBSIDY PROGRAM**

**ARTICLE 2. ELIGIBILITY**

Section

- R9-30-201. General requirements
- R9-30-202. ~~Opportunity to Apply~~ Repeal
- R9-30-203. How to File an Application
- R9-30-204. ~~Assistance with an Application~~ Repeal
- R9-30-204. Eligibility requirements
- R9-30-205. ~~Social Security Number (SSN)~~ Repeal
- R9-30-206. ~~Residency~~ Repeal
- R9-30-207. Income
- R9-30-208. ~~Ineligible Person~~ Repeal
- R9-30-209. Resources
- R9-30-210. ~~Verification~~ Repeal
- R9-30-211. ~~Medicare Requirements~~ Repeal
- R9-30-212. Eligibility Determination
- R9-30-213. Determination of Extra Help Amount
- R9-30-214. Notice of Eligibility Determination by AHCCCS
- R9-30-215. Effective Date of Eligibility
- R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount
- R9-30-218. Reporting Changes

**ARTICLE 4. ~~GRIEVANCE SYSTEM~~ REPEAL**

Section

- R9-30-401. ~~State Fair Hearing Request~~ Repeal
- R9-30-402. ~~State Fair Hearing for an Applicant or a Member~~ Repeal

**ARTICLE 2. ELIGIBILITY**

**R9-30-201. General requirements**

- A.** In accordance with the requirements of Section 1860D-14(a)(3) of the Act (42 U.S.C. 1395w-114(a)(3)), the applicant may apply for Extra Help with the SSA Social Security Administration (SSA) or with AHCCCS. AHCCCS shall offer to help an applicant complete the SSA’s application for Extra Help. If the applicant declines to apply with SSA for the Extra Help program, AHCCCS shall determine eligibility for Extra Help under this Article.
- B.** Confidentiality. The Administration shall maintain the confidentiality of an Extra Help applicant’s or member’s records and limit the release of safeguarded information under R9-22-512.
- C. A person is automatically eligible for the Extra Help program when receiving:**
  - 1. Full Medicaid coverage.**



- 2. Supplemental Security Income (SSI).
- 3. Help from Medicaid paying the person’s Medicare premiums.

**D.** A person residing in a penal institution is not eligible under this Article.

**E.** A member or an applicant and the Administration shall comply with 9 A.A.C. 34, when a request for a State Fair Hearing is submitted.

**R9-30-202. ~~Opportunity to Apply~~ Repeal**

~~The Administration shall provide the opportunity to apply without delay.~~

**R9-30-203. ~~How to File an Application~~**

**A.** ~~To apply for the Extra Help with AHCCCS, a person shall submit a written application form prescribed by AHCCCS to any AHCCCS office or outstation location.~~

**B.** ~~The application is considered filed and complete under ~~R9-22-1501(D)~~ R9-22-302.~~

**C.** ~~An application shall be submitted by:~~

- 1. ~~The applicant, or~~
- 2. ~~The applicant’s personal representative. AHCCCS shall allow a personal representative of the applicant’s choice to accompany, assist, and represent the applicant in the application process.~~

**D.** ~~The Administration shall provide the opportunity to apply without delay.~~

**R9-30-204. ~~Assistance with an Application~~ Repeal**

**A.** ~~AHCCCS shall allow a personal representative of an applicant’s choice to accompany, assist, and represent the applicant in the application process.~~

**B.** ~~Assistance by AHCCCS. If requested, AHCCCS shall help a person complete an application.~~

**R9-30-204. ~~Eligibility requirements~~**

~~The AHCCCS Administration shall require the following for the determination of eligibility of the Extra Help program, an applicant shall:~~

- 1. ~~Furnish a SSN or apply for a SSN;~~
- 2. ~~Reside in Arizona;~~
- 3. ~~Provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility; or~~
- 4. ~~Be a Medicare beneficiary as defined in 20 CFR 418.3010, March 1, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.~~

**R9-30-205. ~~Social Security Number (SSN)~~ Repeal**

~~To be eligible for Extra Help, a person shall furnish a SSN or apply for a SSN.~~

**R9-30-206. ~~Residency~~ Repeal**

~~To be eligible for Extra Help, a person shall reside in Arizona.~~

**R9-30-207. ~~Income~~**

**A.** ~~AHCCCS shall calculate countable income under 20 CFR 418.3301 through 418.3350, as of ~~December 30, 2005~~ March 1, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. AHCCCS shall not count “in-kind support” and “maintenance” as part of the income calculation, specified under 20 CFR 418.3335.~~

**B.** ~~AHCCCS shall determine income eligibility under 42 CFR 423.773 as of ~~January 28, 2005~~ March 1, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.~~

**R9-30-208. ~~Ineligible Person~~ Repeal**

~~A person residing in a penal institution is not eligible under this Article.~~

**R9-30-209. ~~Resources~~**

**A.** ~~AHCCCS shall calculate countable resources under 20 CFR 418.3401 through 418.3425, as of ~~December 30, 2005~~ March 1, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. AHCCCS shall not count the value of any life insurance policy as part of the resource calculation, as described under 20 CFR 418.3425.~~

**B.** ~~AHCCCS shall determine resource eligibility under 42 CFR 423.773, as of ~~January 28, 2005~~ March 1, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.~~

**R9-30-210. ~~Verification~~ Repeal**

~~To be eligible for Extra Help, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.~~

**R9-30-211. Medicare Requirements Repeal**

A person is not eligible for Extra Help unless the person is a Medicare beneficiary as defined in 20 CFR 418.3010, December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-212. Eligibility Determination**

Determinations of eligibility for Extra Help under this Article are made by AHCCCS within 45 days of the date of the application being filed the timeframes specified under 42 CFR 435.911, as of March, 2016, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments, if the individual applies with AHCCCS.

**R9-30-213. Determination of Extra Help Amount**

AHCCCS shall determine the amount of an applicant or member's Extra Help under 42 CFR 423.773, 42 CFR 423.780, and 42 CFR 423.782, as of January 28, 2005 March 1, 2016, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-214. Notice of Eligibility Determination by AHCCCS**

- A. Notice. The administration shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of an applicant or member's hearing rights under 9 A.A.C. 34, Article 1.
- B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility and the amount of the Extra Help.
- C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
  2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard, if applicable; and
  3. The legal authority supporting the decision.

**R9-30-215. Effective Date of Eligibility**

The effective date of eligibility is the first day of the first month that the applicant is eligible for Extra Help under this Article, but no earlier than the month in which the applicant applies or January 1, 2006, whichever is later.

**R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount**

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Change in the amount of subsidy. AHCCCS will adjust the amount of the Extra Help, if a change in countable income or a change in countable resources causes the subsidy amount to change.
- C. Notice.
1. AHCCCS shall follow the discontinuance notice requirements under ~~R9-22-1501(K)~~ R9-22-306(A)(19).
  2. AHCCCS will issue a notice if there is a change in the amount of the Extra Help.

**R9-30-218. Reporting Changes**

A member shall report any changes to AHCCCS, under ~~R9-22-1501(H)~~ R9-22-306.

**ARTICLE 4. GRIEVANCE SYSTEM REPEAL****R9-30-401. State Fair Hearing Request Repeal**

A request for State Fair Hearing under this Chapter shall comply with 9 A.A.C. 34, Article 1.

**R9-30-402. State Fair Hearing for an Applicant or a Member Repeal**

A State Fair Hearing for a member or an applicant under this Chapter shall comply with 9 A.A.C. 34, Article 1.





lated 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. The Commission proposes to amend the rule to add non-governmental organizations (NGOs) to the definition of “eligible applicant” to expand opportunities for Heritage Grant funds to additional applicants. The Commission proposes to amend the rule to remove the stipulation that an eligible applicant cannot have a Heritage grant in extension as this language is more regulatory than descriptive, does not belong in the definition of “eligible applicant” and is addressed under R12-4-702. The Commission 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 to reduce the costs and burdens on nonprofits and state agency sponsors. The Commission believes this amendment will make the application and grant process more efficient by removing administrative levels. The Commission also proposes to amend the rule to include “administrative sub-unit” in the definition of “public agency” to increase consistency between Article 7 rules. In addition, the Commission proposes to amend the rule to repeal the definition of “sensitive elements” as the rule that referenced the term is recommended for repeal and the term will no longer be referenced in the amended rules.

For R12-4-702. General Provisions, 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 Commission 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 to ensure the citizens of Arizona benefit from the use of Heritage Grant funds. The Commission proposes to amend the rule to allow a participant to deposit Heritage Grant funds in an interest bearing account, provided the earned interest is either used to further the project or returned to the Department upon completion of the project, to reduce the burden on the regulated community. The Commission proposes to amend the rule to prohibit a participant from comingling grant funds with any other funds to protect Heritage Grant funds money from potential misuse. The Commission also proposes to streamline and restructure the rule to incorporate the requirements established under R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 to provide those requirements in chronological order for ease of understanding and to make the rule more concise. As a result of this amendment, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 will be repealed. In addition, the Commission proposes to amend the rule to allow the Department to extend the project period to complete the final closure documents to reduce the costs and burdens to persons regulated by the rule and the Department.

For R12-4-703. Heritage Grant Program Funds, 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 Commission 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.

For R12-4-704. Grant Application, the rule establishes the application process, criteria, and information that an applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage grants. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding. As a result of the five-year review, the Commission does not intend to incorporate the requirement that a nonprofit provide proof of their tax exempt status. The Department determined this requirement is unnecessary because an applicant is not required to have tax exempt status in order to qualify for a Heritage grant.

For R12-4-705. Review of Proposals, the objective of the rule 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 due to Heritage fund availability. Applications are not evaluated, compared, or scored against each other, but are reviewed and judged on the basis of their compatibility with the 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. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-706. State Historic Preservation Office Review, the objective of the rule 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 it is determined 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 statutes, (*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 Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-707. Grant Agreement, the objective of the rule 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 grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage grant. The term "default" is somewhat ambiguous; the Department proposes to amend the rule to replace the term "default" with "not in compliance." In addition, 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 requires consensus between both parties. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-708. Reporting and Recordkeeping Requirements, the objective of the rule 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 Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

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

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

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

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Commission's intent in proposing the amendments indicated in this rulemaking is to benefit the regulated community, members of the public, and the Department by streamlining and restructuring the rule. The rulemaking will benefit the Department and those governmental entities applying for Heritage Grants by improving the accuracy, clarity, and understandability of the rules. The Commission proposes additional amendments designed to reduce the burden to persons regulated by the rule where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will have little or no impact on political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, the Commission has determined the benefits of the rulemaking outweigh any costs.

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Marty Herrera, Heritage Fund Administrator  
Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086  
Telephone: (623) 236-7527  
Fax: (623) 236-7110  
E-mail: MHerrera@azgfd.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: June 10, 2016  
Time: 8:00 a.m. to 5:00 p.m.  
Location: Highway 87, Mile Marker 251  
Payson, AZ 85541  
Close of record: June 10, 2016

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

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

The rules do not require a general permit.

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



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

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

The Department did not receive any analyses.

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

Not applicable

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 7. HERITAGE GRANTS**

Section

R12-4-701.	Heritage Grant Definitions
R12-4-702.	General Provisions: <u>Heritage Grant Fund Requirements</u>
R12-4-703.	<u>Heritage Grant Program Funds Repeal</u>
R12-4-704.	<u>Grant Application Repeal</u>
R12-4-705.	<u>Review of Proposals Repeal</u>
R12-4-706.	<u>State Historic Preservation Office Review Repeal</u>
R12-4-707.	<u>Grant Agreement Repeal</u>
R12-4-708.	<u>Reporting and Recordkeeping Requirements Repeal</u>

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 7. HERITAGE GRANTS**

**R12-4-701. Heritage Grant Definitions**

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

“Administrative subunit” means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

- a. School, but not an entire school district;
- b. Field office or project office, but not an entire agency; or
- e. Administrative department, but not an entire city government.

“Eligible applicant” means any public agency, non-governmental organization, or non-profit nonprofit organization sponsored by a public agency that meets the applicable requirements of this Article ~~and does not have a Heritage Fund Grant in extension as authorized under R12-4-707(B).~~

“Facilities” means any structure or site improvements.

“Fund” means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

“Grant agreement” means a document that details the terms and conditions of a grant project.

“Grant effective date” means the date the Department Director signs the Grant Agreement.

“In-kind” means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a ~~permanent~~ public employee's salary, volunteer time, materials, supplies, space, or other donated goods and services.

“Participant” means an eligible applicant who has been awarded a grant from the Heritage Fund.

“Project” means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

“Project period” means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

“Public agency” means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties, school districts, public charter schools, cities, towns, all municipal corporations, administrative subunits, and any other political subdivision.



“Publicly held lands” means federal, public, and reserved land, State Trust Land, and other lands within Arizona that are owned, controlled, or managed by the federal government, a state agency, or political subdivision.

“Sensitive elements” means the specific areas within the geographical area, historically or currently occupied by a species or community of species, which comprise those physical or biological features essential to the establishment or continued existence of the species. These sensitive elements may require special management, conservation or protection considerations.

“Term of public use” means the time period during which the project or facility is expected to be maintained for public use.

**R12-4-702. General Provisions; Heritage Grant Fund Requirements**

- A.** The Department, in its sole discretion, may make Heritage Fund Grants available for projects that:
  - 1. Are located in Arizona or benefit Arizona wildlife or its habitat; and
  - 2. Meet the criteria established in the Heritage Grant application materials.
- B.** ~~An applicant shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. In compliance with A.R.S. § 41-2702, the Department shall may:~~
  - 1. Provide public notice of the time, location, and due date for application submission; and
  - 2. Furnish materials necessary to complete the application.
- B.** ~~An eligible applicant, seeking Heritage Grant funding shall submit a Heritage Grant Application as established under this Article and in compliance with the Heritage Grant application materials.~~
- C.** An applicant seeking Heritage Grant funding shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. An applicant shall provide the following information on the Heritage Grant application form:
  - 1. The name of the applicant;
  - 2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
  - 3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
  - 4. Identification of the application criterion established in the Heritage Grant application materials;
  - 5. A descriptive project title;
  - 6. The name of the site, primary location, and any other locations of the project;
  - 7. Description of the:
    - a. Scope of work and the objective of the proposed project,
    - b. Methods for achieving the objective, and
    - c. Desired result of the project;
  - 8. The beginning and ending dates for the project;
  - 9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions; and
  - 10. Any additional supporting information required by the Department.
  - 11. Signature and date. The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.
- D.** A person applying for multiple projects shall submit a separate application for each project.
- C.E.** ~~An applicant shall demonstrate ownership or control of the project. Ownership or control may be demonstrated through fee title, lease, easement, or agreement. For all other project types related to sites not controlled by an applicant, an applicant shall provide written permission from the property owner authorizing the project activities and access. The applicant’s proof of ownership or control or written permission shall demonstrate:~~
  - 1. Permission for access is not revocable at will by the property owner, and
  - 2. Public access will be granted to the project site for the life of the project, unless the purpose of the project proposal is to limit access.
- F.** Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project’s compatibility with the priorities of the Department, as approved by the Commission.
- G.** The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.
- H.** When applicable, the Department shall not release Heritage Grant funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project’s potential impact on historic and archaeological properties and resources.
- D.I.** ~~The Department shall notify an applicant in writing of the results of the applicant’s submission and announce Heritage Grant awards at a regularly scheduled open meeting of the Commission.~~
- E.** ~~A participant shall not begin a project described in an application until after the grant effective date.~~
- J.** A participant shall:
  - 1. Sign the Grant Agreement before the Department transfers any grant funds.
  - 2. Deposit transferred Heritage Grant funds in a dedicated account carrying the name and number of the project. In the event the funds are deposited in an interest-bearing account, any interest earned shall be:
    - a. Used for the purpose of furthering the project, with prior approval from the Department; or



- b. Remitted to the Department upon completion of the project.
- ~~F.3.~~ A participant shall complete Complete the project as specified under the terms and conditions of the Grant Agreement.
4. Use awarded Heritage Grant funds solely for the project described in the application and as approved by the Department.
5. Bear full responsibility for performance of its subcontractors to ensure compliance with the Grant Agreement.
6. Pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.
7. Submit records that substantiate the expenditure of Heritage Grant funds. In addition, each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.
8. Allow Department employees or agents to conduct inspections and reviews:
- a. To ensure compliance with all terms and conditions established under the Grant Agreement.
- b. Before release of the final payment.
9. Give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.
- ~~G.~~ A participant shall deposit transferred Heritage Grant Funds in a dedicated non-interest bearing account carrying the name and number of the project.
- ~~H.~~ A participant shall use awarded Heritage Grant Funds solely for eligible purposes of the funding program as defined by law and as approved by the Department.
- ~~K.~~ A participant shall not:
1. Begin a project described in the application until after the grant effective date.
- ~~I.2.~~ A participant shall not use Use Heritage Grant Funds funds for the purpose of producing income unless authorized by the Department. A participant shall use all income generated to further the purpose of the approved project or surrender the income to the original funding source.
3. Comingle Heritage Grant funds with any other funds.
4. Use Heritage Grant funds to pay the salary of any public agency employee. A participant may use a public agency's employee's time as in-kind match for the project specified in the Grant Agreement.
- ~~L.~~ The parties may amend the terms of the Grant Agreement by mutual written consent. The Department shall prepare any approved amendment in writing, and both the Department and the Grantee shall sign the amendment.
- ~~M.~~ The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.
- ~~N.~~ A participant shall submit project status reports, as required in the Grant Agreement. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports. The project status report shall include the following information, as applicable:
1. Progress in completing approved work;
2. Itemized, cumulative project expenditures;
3. A financial accounting of:
- a. Heritage Grant Funds,
- b. Matching funds,
- c. Donations, and
- d. Income derived from project funds;
4. Any delays or problems that may prevent the on-time completion of the project; and
5. Any other information required by the Department.
- ~~O.~~ At the end of the project period and for each year until the end of the term of public use, a participant shall:
1. Certify compliance with the Grant Agreement, and
2. Complete a post-completion report form furnished by the Department.
- ~~J.P.~~ If Upon completion of approved project elements, if a balance of awarded Heritage Grant funds remain remains upon completion of approved project elements, the participant may, with Department approval, use those:
1. Use the unexpended funds for an additional project consistent with the original scope of work, when approved by the Department; or surrender those
2. Surrender the unexpended funds to the Department.
- ~~O.~~ Upon completion of the project a participant shall:
1. Surrender equipment with an acquisition cost of more than \$500 to the Department upon completion, or



- 2. Use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement.
- ~~K.~~ A participant shall use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement, and surrender the equipment to the Department upon completion of the project, if the equipment has an acquisition cost of more than \$500.
- ~~L.~~ A participant shall not use Heritage Grant funds to pay the salary of any permanent employee. A participant may use a permanent employee's time as in-kind match for the project specified in the Grant Agreement.
- ~~M.~~ A participant shall allow Department employees or agents to conduct inspections and reviews:
  - 1. To ensure compliance with all terms and conditions established under the Grant Agreement.
  - 2. Before release of the final payment.
- ~~N.~~ A participant shall submit records that substantiate the expenditure of Heritage Grant funds.
- ~~O.~~ A participant shall bear full responsibility for performance by subcontractors to ensure compliance with the Grant Agreement.
- ~~P.~~ A participant shall pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.
- ~~Q.~~ A participant shall give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.
- ~~R.~~ A participant may request an extension beyond the approved project period by writing to the Department.
  - 1. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period.
  - 2. If approved, an extension shall be signed by both the participant and the Department.
- ~~S.~~ A participant that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.
- ~~T.~~ In addition, the Department may administratively extend the project period for good cause such as, but not limited to, inclement weather, internal personnel changes, or to complete the final closure documents.
- ~~R.U.~~ An administrative subunit A participant that failed to comply with the terms and conditions of a Grant Agreement shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's participant's project is brought into compliance.
- ~~S.~~ An administrative subunit that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.
- ~~V.~~ If a participant is not in compliance with the Grant Agreement, the Department may:
  - 1. Terminate the Grant Agreement.
  - 2. Seek recovery of grant monies awarded, and
  - 3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.

**R12-4-703. ~~Heritage Grant Program Funds Repeal~~**

- ~~A.~~ Environmental Education Grant: An eligible applicant shall ensure a proposed project is designed to:
  - 1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;
  - 2. Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and
  - 3. Benefit Arizona public schools, public charter schools, and students.
- ~~B.~~ HAPM Grant: Identification, Inventory, Acquisition, Protection, and Management of Sensitive Elements: An eligible applicant shall ensure a proposed project is designed to:
  - 1. Preserve and enhance Arizona's natural biological diversity; and
  - 2. Incorporate identification, inventory, acquisition, protection, or management of sensitive elements.
- ~~C.~~ Outdoor Education Grant: An eligible applicant shall ensure a proposed project is designed to:
  - 1. Provide a meaningful outdoor educational experience;
  - 2. Develop awareness, appreciation, and stewardship of Arizona's wildlife and wildlife habitats; and
  - 3. Benefit Arizona public schools, public charter schools, and students.
- ~~D.~~ Public Access Grant: An eligible applicant shall ensure a proposed project:
  - 1. Is designed to increase or maintain public access for recreational use related to wildlife;
  - 2. Is in cooperation with federal land managers, local and state governments, private landowners, or public users, as applicable; and
  - 3. Is designed to inform and educate the public about recreational use of publicly held lands and public access to those lands.
- ~~E.~~ Schoolyard Habitat Grant: An eligible applicant shall ensure a proposed project is designed to:
  - 1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment;
  - 2. Encourage wildlife educational activities on Arizona school sites or adjacent areas;
  - 3. Encourage native wildlife species, utilize native plant materials, and demonstrate water conservation techniques;



4. Allow Arizona students to actively participate in the planning, development, and construction process;
  5. Be integrated into the school curriculum; and
  6. Benefit Arizona public schools, public charter schools, and students.
- F.** Urban Wildlife and Urban Wildlife Habitat Grant. An eligible applicant shall ensure a proposed project:
1. Is designed to conserve, enhance, and establish wildlife habitats and populations consistent with urban environments, and increase public awareness and support for urban wildlife resources; and
  2. Meets one of the following criteria:
    - a. Is within the incorporated limits of a city or town;
    - b. Is within five miles, in straight distance, of the boundary of an incorporated area; or
    - c. Is an area that receives significant impact from residential development, as determined by the Department.

**R12-4-704. Grant Application Repeal**

- A.** To be considered for a Heritage Grant, an eligible applicant shall submit a grant application as established under this Article and in compliance with the Heritage Grant Application materials.
- B.** An applicant who is applying for multiple projects, shall submit a separate application for each project.
- C.** An applicant shall provide the following information on the Heritage Grant application form:
1. The name of the applicant;
  2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
  3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
  4. Identification of the specific Heritage Grant program fund;
  5. A descriptive project title;
  6. The name of the site, primary location, and any other locations of the project;
  7. Description of the:
    - a. Scope of work and the objective of the proposed project;
    - b. Methods for achieving the objective; and
    - c. Desired result of the project;
  8. The beginning and ending dates for the project;
  9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions;
  10. If the eligible applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, documentation or other evidence of the exemption; and
  11. Any additional supporting information required by the Department.
- D.** The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.

**R12-4-705. Review of Proposals Repeal**

- A.** Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the Department, as approved by the Commission.
- B.** The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.

**R12-4-706. State Historic Preservation Office Review Repeal**

When applicable, the Department shall not release Heritage Grant Funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project's potential impact on historic and archaeological properties and resources.

**R12-4-707. Grant Agreement Repeal**

- A.** Before the Department transfers any grant funds, the applicant shall sign the Grant Agreement.
- B.** A participant may request an extension beyond the approved project period by writing to the Department. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period. If approved, an extension shall be signed by both the participant and the Department.
- C.** Notwithstanding subsection (B), the Department may extend the project period for good cause such as, but not limited to, inclement weather or internal personnel changes.
- D.** The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.
- E.** If a participant is in default of the Grant Agreement, the Department may:
1. Terminate the Grant Agreement;
  2. Seek recovery of grant monies awarded, and
  3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.
- F.** The Department, at its sole discretion, has the authority to include additional conditions in the Grant Agreement prior to signing the Agreement and through Amendment.



**R12-4-708. Reporting and Recordkeeping Requirements Repeal**

- ~~**A.** A participant shall submit project status reports to the Department as specified in the Grant Agreement. The project status report shall include the following information, as applicable:
  - 1. Progress in completing approved work;
  - 2. Itemized, cumulative project expenditures;
  - 3. A financial accounting of:
    - a. Heritage Grant Funds;
    - b. Matching funds;
    - c. Donations; and
    - d. Income derived from project funds;
  - 4. Any delays or problems that may prevent the on-time completion of the project; and
  - 5. Any other information required by the Department.~~
- ~~**B.** At the end of the project period and for each year until the end of the term of public use, a participant shall:
  - 1. Certify compliance with the Grant Agreement; and
  - 2. Complete a post-completion report form furnished by the Department.~~
- ~~**C.** A participant shall submit project status reports, as required in the grant materials. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports.~~
- ~~**D.** Each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.~~