

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF MILITARY AFFAIRS

(Authority: A.R.S. §§ 26-102 and 26-127)

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 12-1).

This Chapter contains rules which were repealed under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 (as substantiated by Attorney General Opinion I87-061). Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's office for publication in the Arizona Administrative Register; and the Department did not hold public hearings on the changes. Because this Chapter contains exempt rules, it is being printed on blue paper.

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ARTICLE 1. MILITARY INSTALLATION FUND

New Article 1, consisting of Sections R8-3-101 through R8-3-114, recodified from 20 A.A.C. 1, Article 5, under Laws 2010, Ch. 208, at 18 A.A.R. 848, effective March 15, 2012 (Supp. 12-1).

Article 1, consisting of Sections R8-3-101 through R8-3-104, repealed under an exemption from the provisions of A.R.S. Title 41, Chapter 6, effective March 25, 1998 (Supp. 98-1).

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Article 1 was repealed under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion I87-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; and the Department did not hold public hearings on the rulemaking action.

ARTICLE 1. MILITARY INSTALLATION FUND

R8-3-101. Definitions

In addition to the definitions provided in A.R.S. § 26-261, the following definitions apply to this Article unless the context otherwise requires:

1. "Accident potential zone" has the meaning in A.R.S. §28-8461(1) and (2), as shown in the maps referenced in subsection (6).
2. "AMAC" means the Arizona Military Affairs Commission established under A.R.S. § 26-261.
3. "Clear zone" has the meaning in A.R.S. § 28-8461(8).
4. "Conservation easement" has the meaning in A.R.S. § 33-271(1).
5. "Development right" means the right to undertake and complete the development of real property for a particular use.
6. "High noise zone" means an area designated as "a high noise zone" on the military installation maps listed below. Maps are updated annually with State Land and Department of Real Estate. Current maps will be available from the Department of Real Estate):
 - a. Luke Air Force Base Military Airport Map;
 - b. Luke AFB Auxiliary Airfield Map
 - c. Marine Corps Air Station Yuma Land Use Boundaries;
 - d. Yuma Marine Corps Air Station Military Airport Map;
 - e. Gila Bend Auxiliary Airfield Map;

- f. Davis-Monthan Air Force Base Military Airport Map;
 - g. Libby Army Airfield Fort Huachuca Military Airport Map; and
 - h. Laguna Army Airfield Yuma Proving Ground (YPG) Military Airport Map.
7. "Property management" means the preservation, transfer or disposal of property, including lease or sale of managed assets, consistent with the preservation or enhancement of military facilities in Arizona. Includes any structural renovations, construction of building modifications or improvements that mitigate or attenuate impact in high noise or accident potential zones, or removal of structures or improvements that are necessary for acquisition of private property for the purpose of protecting a military installation.
 8. "MIF" means the Military Installation Fund established under A.R.S. § 26-262.
 9. "Military installation" has the meaning in A.R.S. § 26-261(F).
 10. "Multi-use opportunity" means a chance to simultaneously benefit a military installation and the community in the vicinity of the military installation including associated airspace, military training routes and ranges.
 11. "Property" means real property including all rights to the real property such as easements, restrictive covenants, and development rights.
 12. "Department" means the Department of Emergency and Military Affairs.

Historical Note

Adopted effective January 29, 1982 (Supp. 82-1). Repealed effective February 3, 1998, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001(1) as determined by Attorney General Opinion I87-061; filed in the Secretary of State's office March 25, 1998 (Supp. 98-1). New Section recodified from R20-1-501 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-102. Notice of Application Deadline and Public Comment Period

- A. The Department shall provide notice of the application deadline for awards from MIF at least 60 days before the application deadline. The Department shall ensure that notice of the application deadline is:
 1. Published in the Arizona Administrative Register,
 2. Posted on the Department's web site, and
 3. Posted on the Arizona Military Affairs Commission meeting agenda.
- B. The Department shall ensure that the notice provided under subsection (A) indicates that a property owner or jurisdiction interested in submitting an application is required to file an application form with the Department during normal working hours.
- C. The Department shall provide an application form and instructions to a property owner or jurisdiction upon request.
- D. The Department shall ensure that the notice provided under subsection (A) states that:
 1. A copy of submitted applications will be available for public review at the Department, and
 2. Members of the public may submit written comments to the Department about the submitted applications within the time specified in the notice.

Historical Note

Adopted effective January 29, 1982 (Supp. 82-1). Repealed effective February 3, 1998, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001(1) as determined by Attorney General Opinion I87-061; filed in the Secretary of State's office March 25, 1998 (Supp. 98-1). New Section recodified from R20-1-502 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-103. Administrative Review

- A. The Department shall perform an administrative review to determine whether an application is complete and complies with the requirements in this Article within 45 days after the application deadline.
- B. If the Department determines that an application is incomplete or does not comply with the requirements of this Article, the Department shall return the application to the applicant with a written notice of deficiencies that includes:
 1. One original and four legible copies of the completed application form;
 2. Supporting application documentation (one original and four copies);
 3. The name of contact person, and the contact person's title, telephone and fax number and if possible an email address;
 4. A legal description of the property;
 5. Statements regarding the property the owner is offering for sale;
 6. A map of the real property showing its relation to the specified military installation;
 7. The date the property was acquired by the current owners;
 8. The property owner's statement of legal ownership;
 9. A list of all recorded/unrecorded encumbrances, liens, mortgages or easements;
 10. A statement disclosing a phase one environmental inspection and the condition on the property;
 11. Narrative regarding the applicant's eligibility to apply for the MIF award under the criteria specified in the applicant;
 12. A description of the property owner's inability to use or limitation of use of the property;
 13. The amount of funds requested, and the source of any supplemental funding available;
 14. A description of measures taken by the applicant to mitigate the impact of the military installation on the property;
 15. Documents from the military installation, city, town, county or other entity or individuals that support or oppose the proposed land acquisition.
 16. The applicant's signature shall be notarized on the original application.
- C. An applicant whose application is returned with a written notice of deficiencies shall correct the deficiencies and resubmit the application within 15 days from the date on the notice of deficiencies.
- D. If an applicant whose application is returned with a written notice of deficiencies fails to correct the deficiencies and resubmit the application within the time provided under subsection (C), the Department shall close the file on the application unless the Department determines that it is in the best interest of the state to provide additional time for the applicant to submit a complete application.

- E. Except as provided in subsection (D), the Department shall complete the administrative review of an application within 60 days after the application deadline.
- F. The applicant is required to submit information changes within 15 days of a change in application facts.
- G. If any information in an application changes before monies are expended, the Department shall evaluate the changed information and decide whether it is possible to proceed with the application as amended or a new application is required.

Historical Note

Adopted effective January 29, 1982 (Supp. 82-1). Repealed effective February 3, 1998, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001(1) as determined by Attorney General Opinion I87-061; filed in the Secretary of State's office March 25, 1998 (Supp. 98-1). New Section recodified from R20-1-503 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-104. Application for Approval of Expenditures of Monies or Funds

- A. An applicant shall submit to the Department an original and four legible copies of a completed application, using a form that is available from the Department.
- B. An applicant shall comply with the requirements of this Section on or before the deadline published under R8-3-102. The applicant shall provide the following information, on or with the application form:
 1. The property owner's name, mailing address, telephone number and, if available, fax number and e-mail address;
 2. Information about the property owner's representative or agent, if applicable, including:
 - a. Name of representative or agent, mailing address, telephone number and, if available, fax number and e-mail address; and
 - b. Name of contact person for the representative or agent and the contact person's title, telephone and fax numbers, and e-mail address;
 3. If the property owner is represented by another person, written consent for representation that is signed by the property owner and notarized;
 4. A completed "Application Checklist" form which is available from the Department, listing all items included as part of the application;
 5. The legal description of the location of the property offered for acquisition;
 6. If less than all of the property owned is being offered for acquisition, a description of the portion of the property the owner is offering for acquisition;
 7. A map of the applicable military installation showing the property offered for acquisition in relationship to the military installation;
 8. The date the property was acquired by the current property owner;
 9. The name in which title to the property is held;
 10. A list of all known recorded or unrecorded mortgages, encumbrances, liens, and easements on the property;
 11. A statement disclosing any known hazardous environmental conditions on the property;
 12. A narrative explaining the applicant's eligibility to apply for funding from MIF;
 13. A request statement stating the amount of MIF monies being requested, along with a copy of the most recent notice of the property valuation provided by the county

assessor in which the property is located and any other evidence used to determine the amount of funds to request;

14. The amount and source of any supplemental funding available for the acquisition. Attach to the application verification from the source of the supplemental funding that supplemental funding is available and indicate whether there is a limitation on the availability or use of the supplemental funding;
 15. A written description of the property owner's inability to use or limitation on the use of the property and how long the inability or limitation has existed due to state or local military planning and zoning mandates;
 16. A written description of measures taken by the applicant to mitigate the impact of the military installation on the property and the property owner;
 17. Any supporting or opposing documents from a military installation, city, town, or county related to the proposed acquisition;
 18. A written explanation or documentation providing information the applicant believes will assist the Department and AMAC regarding the acquisition request; and
 19. The signature of the property owner or the owner's representative verifying that all information in the application is accurate and correct to the best of the property owner's or the representative's knowledge, under penalty of perjury.
- C. If any of the information submitted in the application changes, an applicant shall provide written notice no later than 15 days before the close of the administration review period established under R8-3-103(A). If information changes within 15 days of the close of the review period, the applicant shall notify the Department of the change and the Department shall consider the best interests of the state in deciding whether to consider the application. The following changes require specific information to be included in the notice:
1. If ownership of the property changes, the new owner shall ensure that the required notice:
 - a. Is signed and notarized by the new owner and indicates whether the new owner wants the Department to continue to consider the application;
 - b. Updates the information contained in the application; and
 - c. Contains copies of legal documents evidencing the change in ownership; or
 2. If use of the property changes, the owner of the property shall ensure that the required notice describes the nature of the changed use.

Historical Note

Adopted effective September 27, 1985 (Supp. 85-5). Repealed effective February 3, 1998, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001(1) as determined by Attorney General Opinion I87-061; filed in the Secretary of State's office March 25, 1998 (Supp. 98-1). New Section recodified from R20-1-504 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-105. Department Solicitation of Comments Regarding Applications for Acquisition of Private Property

To assist the Department in scoring an application for the acquisition of private property and making a recommendation regarding the application to AMAC, the Department shall solicit written comments regarding the application from personnel of the applicable

military installation, city, town, county, and any other entity that may have an interest in the application. Responses to solicited comments will be placed on the AMAC committee agenda for review prior to final property acquisition approval.

Historical Note

New Section recodified from R20-1-505 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-105 renumbered to R8-3-111; New Section R8-3-105 renumbered from R8-3-107 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-106. Department Scoring of Applications for Acquisition of Private Property

The Department shall rank applications in order of score. The Department shall use the following evaluation criteria to score applications for acquisition of private property. The Department shall give an application a score under either subsection (1) or (2) but not both:

1. Location of the property. When there is a range of points, the Department shall assign the highest score to property in closest proximity to a runway. If the property is in more than one zone, the Department shall assign the highest applicable score.
 - a. Clear zone as defined in A.R.S. § 28-8461(8): 300 points;
 - b. Accident potential zone 1 as defined in A.R.S. § 28-8461(1): 250-290 points;
 - c. Accident potential zone 2 as defined in A.R.S. § 28-8461(2) 200-240 points;
 - d. High noise zone, according to the day-night sound levels in decibels under A.R.S. § 28-8481(J):
 - i. Decibel level 85 or more: 190 points;
 - ii. Decibel level 80-84: 175 points;
 - iii. Decibel level 75-79: 160 points;
 - iv. Decibel level 70-74: 140 points; or
 - v. Decibel level 65-69: 125 points.
2. Property located outside of a clear zone, accident potential zone, and high noise zone, but which, based on written input from authorized personnel of the applicable military installation, is vital to the preservation or enhancement of a military installation: 0 -175 points;
3. The extent of the property owner's inability to use, or limitation on the use of the property according to zoning regulations or state statute enacted for the preservation of the military installation: 0 - 95 points;
4. The extent to which acquisition of the property by the state may prevent or reduce encroachment or other activity that could hinder preservation of the military installation or its ability to accomplish its mission: 0 - 90 points;
5. The amount of supplemental funding, if any, as a percentage of the estimated value of the property:
 - a. At least 5 percent supplemental funding: 10 points, and
 - b. For each additional percentage point of supplemental funding: 1 point to a maximum of 100 points for 95 percent supplemental funding; and
6. The economic efficiency of using MIF to acquire the property: 0 to 100 points.

Historical Note

New Section recodified from R20-1-506 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-106 renumbered to R8-3-110; New Section R8-3-106 renumbered from R8-3-109 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-107. Department Report to AMAC Regarding Applications for Acquisition of Private Property; Notice of Hearing

- A. The Department shall compile and forward to AMAC a report that includes the following:
 1. Applications for expenditures of funds accepted as complete under R8-3-103;
 2. Written comments received under R8-3-102(D) and; R8-3-105;
 3. Evaluation scores and ranking under; R8-3-106;
 4. Available funding calculated using the formula under A.R.S. § 26-262(G); and
 5. The recommended funding distribution.
- B. At least 14 days before the AMAC meeting at which applications for acquisition of private property will be considered, the Department shall provide each applicant with written notice of the date, time, and location of the meeting, and a copy of the portions of the Department's report relevant to the applicant's property.

Historical Note

New Section recodified from R20-1-507 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-107 renumbered to R8-3-105; New Section R8-3-107 renumbered from R8-3-108 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-108. AMAC Recommendation Regarding Applications for Acquisition of Private Property

- A. AMAC shall review the Department's report under R8-3-107.
- B. If AMAC determines that oral testimony regarding an application for acquisition of private property will assist AMAC to make a recommendation, AMAC shall allow oral testimony at the open meeting for review of applications.
- C. AMAC shall base its recommendation to the Department on AMAC's assessment of:
 1. The likelihood that acquisition of the private property will preserve and enhance the mission of a military installation, and
 2. The economic efficiency of applying MIF monies for the greatest protection or enhancement of a military installation.
- D. AMAC shall transmit its written recommendation under A.R.S. § 26-262(D) to the Department, including any directions or alternatives, within seven days after its decision.

Historical Note

New Section recodified from R20-1-508 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-108 renumbered to R8-3-107; New Section R8-3-108 renumbered from R8-3-111 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-109. Process for Determining Acceptable Value for Expenditure of Funds

- A. The Department shall not pay more than fair market value to acquire private property using MIF monies.
- B. To determine the fair market value of private property to be acquired using MIF monies, the Department shall have the private property appraised by a professional appraiser who is under contract with the state.
- C. A property owner that disagrees with the fair market value determined under subsection (B) may appeal the determination under R8-3-117.
- D. For all other expenditures of funds relating to property preservation, the Department shall follow guidelines found in Title

41, Chapter 23, Article 5 relating to construction, building improvement and procurement standards.

Historical Note

New Section recodified from R20-1-509 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-109 renumbered to R8-3-106; New Section R8-3-109 made by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-110. Leaving an Application for Acquisition of Private Property on File

- A.** An applicant that submits a complete application under R8-3-104 may leave the application on file with the Department for a maximum of five years.
- B.** An applicant that leaves a complete application on file with the Department under subsection (A) may request that the Department consider the application in a subsequent year. To request that the application be considered in a subsequent year, the applicant shall submit to the Department a written request before the application deadline specified under R8-3-102. The applicant shall include the following information in the written request:
1. The name of the property owner as originally filed with the Department; and
 2. Either a statement that the information in the application as previously submitted is current, or a statement of specific amendments to the original application.
- C.** If the Department receives a request under subsection (B), the Department shall score and rank the application under R8-3-106 with other applications for acquisition of private property.

Historical Note

New Section recodified from R20-1-510 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-110 renumbered to R8-3-113; New Section R8-3-110 renumbered from R8-3-106 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-111. Application for Funding for a Military Installation Preservation and Enhancement Project

- A.** A city, town, or county seeking funding for a military installation preservation and enhancement project shall submit an original and four legible copies of a completed application to the Department, using a form that is available from the Department, by the deadline published under R8-3-102. The applicant under this Section is the representative authorized by the requesting jurisdiction.
- B.** The applicant shall provide the following information on or with the application form:
1. The name of the requesting jurisdiction;
 2. The name of military installation that will be preserved or enhanced by the proposed project;
 3. The applicant's name, mailing address, telephone number and, if available, fax number and e-mail address;
 4. The name of contact person if other than the applicant and the contact person's title, mailing address, telephone and fax numbers, and e-mail address;
 5. The date on which the requesting jurisdiction approved the project and authorized submission of the application for funding. Attach to the application evidence that the application was authorized by the jurisdiction;
 6. Whether the proposed project involves acquisition of private property;
 7. A completed "Application Checklist" which is a form available from the Department;

8. The names of persons or organizations, if any, with which the jurisdiction will work with on the proposed project;
9. The name and brief summary of the proposed project;
10. If funding is obtained, an estimated project timeline including the dates on which the project is expected to begin and be completed;
11. Statements explaining the following:
 - a. How the proposed project will preserve or enhance the military installation;
 - b. Past action taken by the jurisdiction to preserve or enhance the military installation;
 - c. Whether and how the proposed project involves a multi-use opportunity; and
 - d. Whether and how the proposed project will mitigate impacts of the military installation on the surrounding community;
12. Total budget for the proposed project including:
 - a. The amount of funding requested from MIF, and
 - b. The amount of funding from another source including the identity of the other source, including verification from the source of the other funding and whether there is a limitation on the availability or use of the other funding;
13. If the proposed project involves acquisition of private property:
 - a. The name, mailing address, telephone number and, if available, fax number and e-mail address of the property owner;
 - b. The legal description of the location of the property to be acquired;
 - c. A map of the applicable military installation showing the property to be acquired in relationship to the military installation; and
 - d. An appraisal of the property to be acquired that is:
 - i. Prepared by an appraiser under contract with the state, and
 - ii. Completed no more than 60 days before the date of application;
14. Any documents from the military installation, city, town, or county that support or oppose the proposed project;
15. A written explanation or documentation the applicant believes will assist and AMAC regarding the proposed project application;
16. The signature of the applicant verifying that all information in the application is accurate and correct, to the best of the applicant's knowledge, under penalty of perjury; and
17. A signed offer, using a form available from the Department, to the state of Arizona.

Historical Note

New Section recodified from R20-1-511 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-111 renumbered to R8-3-108; New Section R8-3-111 renumbered from R8-3-105 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-112. Department Solicitation of Comments Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects

To assist AMAC in evaluating an application for funding for a military installation preservation and enhancement project, the Department shall solicit written comments regarding the application from authorized personnel of the applicable military installation. The Department shall ask authorized personnel of the military installation to:

1. Indicate whether the military installation supports the proposed project; and
2. If multiple projects are proposed for the same military installation, rank the proposed projects in priority order.

Historical Note

New Section recodified from R20-1-512 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-112 renumbered to R8-3-116; New Section made by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-113. Criteria for AMAC Evaluation of Applications for Funding for Military Installation Preservation and Enhancement Projects

AMAC shall use the following criteria to evaluate an application for funding for a military installation preservation and enhancement project submitted under R8-3-111:

1. How the proposed project will preserve or enhance the military installation;
2. Past actions taken by the jurisdiction to preserve the military installation;
3. Whether and how the proposed project involves a multi-use opportunity;
4. Whether and how the proposed project will mitigate impacts of the military installation on the surrounding community;
5. The percentage of the total budget for the proposed project to be provided by sources other than MIF;
6. Comments from authorized personnel of the applicable military installation submitted in response to the Department's solicitation issued under R8-3-112; and
7. If the proposed project involves acquisition of private property, extent to which acquisition of the private property will prevent or reduce encroachment or other activity that could hinder preservation of the military installation or the ability of the military installation to accomplish its mission.

Historical Note

New Section recodified from R20-1-513 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-113 renumbered to R8-3-115; New Section R8-3-113 renumbered from R8-3-110 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-114. Notice of Hearing and AMAC Recommendation Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects

- A. When AMAC completes the evaluation of applications for funding for military installation preservation and enhancement projects, AMAC shall ensure that applicants are provided written notice of the AMAC meeting at which the applications will be considered.
- B. AMAC shall ensure that the written notice required under subsection (A) is provided at least 14 days before the AMAC meeting at which the applications will be considered and specifies the date, time, and location of the meeting.
- C. If AMAC determines that oral testimony regarding an application for funding for a military installation preservation and enhancement project will assist AMAC to make a recommendation, AMAC shall allow oral testimony at the open meeting for review of applications.
- D. AMAC shall base its recommendation to the Department on AMAC's assessment of:
 1. The likelihood that the proposed project will preserve and enhance the applicable military installation, and

2. The military installation preservation and enhancement benefits from the proposed project justify the cost to MIF.
- E. AMAC shall transmit its written recommendation under A.R.S. § 26-262(D) to the Department, including any directions or alternatives, within seven days after its decision.

Historical Note

New Section recodified from R20-1-514 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1). Section R8-3-114 renumbered to R8-3-117; New Section R8-3-114 made by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-115. Military Installation Preservation and Enhancement Project Reporting Requirements

- A. For the purpose of this Section, a "successful applicant" is any jurisdiction awarded MIF monies under this Article for a military installation preservation and enhancement project.
- B. A successful applicant shall provide the Department with a written report within six months of the Department's decision under R8-3-112 on the regarding progress of the military installation preservation and enhancement project, and an accounting of MIF monies received and used, at the times specified by the Department in the contract between the Department and the successful applicant.

Historical Note

New Section R8-3-115 renumbered from R8-3-113 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-116. Department Decision

- A. After AMAC forwards its recommendations to the Department, the Department shall review the recommendations and decide whether to:
 1. Accept AMAC's recommendation and award the recommended amount to an applicant;
 2. Accept AMAC's recommendation but award a reduced amount to an applicant; or
 3. Reject AMAC's recommendation and deny an award to an applicant.
- B. The Department shall provide an applicant with a copy of its written decision within 21 days after AMAC's recommendation. The Department shall include in its written decision the reason for denying or reducing an award and include a copy of R8-3-117.
- C. If the Department decides to award funding for the acquisition of private property, the Department shall make the property owner an offer to purchase the property. The Department shall inform the property owner that the offer to purchase is open for only 90 days and if the offer to purchase is not accepted within the 90 days, funding for acquisition of the private property may no longer be available.
- D. If a property owner accepts an offer to purchase made under subsection (C), the Department shall ensure that the purchase contract specifies that payment from MIF is contingent upon satisfactory completion of legal requirements for acquisition of the property within nine months of the written decision issued under subsection (B).

Historical Note

New Section R8-3-116 renumbered from R8-3-112 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

R8-3-117. Appeals

- A. The following applicants may appeal a decision by the Department:
 1. An applicant that is denied MIF funding,

2. An applicant that is awarded MIF funding for a military installation preservation and enhancement project but the amount awarded is less than the amount recommended by AMAC, and
 3. A property owner that disagrees with the fair market value determined for the property.
- B.** To appeal a decision made by the Department, the affected person (Appellant) shall submit a letter to the Adjutant General within 30 days of the date printed on the written decision issued under R8-3-116(B). The appellant shall ensure that the letter clearly states the legal or factual basis for the appeal.
 - C.** If an appeal is about the fair market value of property and the Adjutant General determines that assistance regarding the fair market value of the property will be useful, the Adjutant General shall ask the Land Department Board of Appeals for an opinion regarding the fair market value of the property.
 - D.** The Adjutant General shall review the substance of the appeal, make a final decision, and respond in writing by mail to the appellant, within 30 days. If the Adjutant General consults the Land Department Board of Appeals during the review under subsection (C), the final decision shall be rendered and written notice provided to the appellant within 60 days after receiving the appeal letter or within 30 days after receiving an opinion from the Land Department Board of Appeals whichever is earlier.
 - E.** If the appellant disagrees with the decision made by the Adjutant General, the appellant may submit in writing a request for a hearing, which shall be scheduled and heard in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section R8-3-117 renumbered from R8-3-114 and amended by final rulemaking at 19 A.A.R. 588, effective March 5, 2013 (Supp. 13-1).

ARTICLE 2. RANGES AND TRAINING SITES

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-201. Purpose

This Article is intended to outline the special policies and procedures established for non-military users of ranges (including indoor), training areas, and facilities controlled or operated by the Arizona Army National Guard.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-202. Non-military "Organizations"

- A.** All non-military organizations are required to execute AGO Form 350-6-1-R, "Nonexclusive License to Use Ranges, Training Areas, and Facilities", prior to any use. Arizona National Guard members and their dependents are exempt from this requirement.
- B.** AGO Form 350-6-1-R license agreements will be approved for periods not to exceed six months. Longer agreements will be negotiated separately. See AGO Form 350-6-1-R at the end of this Article.
- C.** Non-military organizations are required to provide proof of liability insurance in the amount of \$1,000,000/\$1,000,000 for bodily injury and \$100,000 for property damage.
- D.** All non-military organizations will be subject to having an AZ ARNG safety officer present as a precondition of approval to conduct certain training, testing, or operations as determined by the Arizona Army National Guard. Whenever a safety officer is required, the using organization will reimburse the Arizona Army National Guard for the pay and allowances of the safety officer.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-203. Personal Use of Firing Ranges

- A.** Arizona National Guard members and their dependents. Limited use of firing ranges is authorized for active and retired members of the Arizona National Guard and their dependents. Use will be on a non-interference basis. To be eligible, the following safety provisions must be satisfied:
 1. The National Guard member will serve as sponsor to the member's dependents and must be present during all shooting.
 2. The National Guard member must be safety certified within the past year to use firing ranges personally or to serve as sponsor for the member's dependents. Certification classes are conducted monthly by the Training Site Support Division with the assistance of members of the State Marksmanship Team. For class schedule, call (602) 267-2651.
- B.** All other persons. The personal use of firing ranges by individual shooters is prohibited except for members of the Arizona National Guard and their dependents as described above. All other persons must be members of an organization which holds the aforementioned insurance coverage and has executed AGO Form 350-6-1-R, non-exclusive license agreement.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the

Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-204. Planning and Scheduling

- A. Planning and scheduling is done in accordance with AZ ARNG Pam 350-6. Non-military use will be scheduled so as not to interfere with military training. Military training has priority over all users.
- B. Confirmation. The proponent agency for this regulation will insure written confirmation to requesting organizations in a timely manner. Once a training range, site, or area has been requested, follow-up coordination is the responsibility of the requesting organization. Allow 15 days for the request to be processed. Fees must be paid at the time of application. Coordination can be made by telephone: commercial (602) 267-2651 or DSN 853-2651.
- C. Cancellations. Using organizations must make notice of cancellation known immediately to insure prompt availability to others. Likewise, the Arizona Army National Guard will make speedy notification to users of any forced cancellation of approved requests. No refund of fees will be made if the range is cancelled by the requester within 72 hours of the scheduled event.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-205. Range Fees

Range fees offset the cost of range maintenance and operations.

1. No Fees Due. Arizona National Guard members and their dependents do not pay range fees.
2. Fees Due. Non-military organizations must pay range fees.
3. Fee Schedule. Fees are \$2.00 per person, per day, per use, for outdoor ranges and \$4.00 per person, per day for indoor ranges. Fees will be made payable to "Treasurer of the United States" and must accompany the training request form.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

The following Section was adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-1001 as substantiated by Attorney General Opinion 187-061. Exemption from the Administrative Procedure Act means that the Governor's Regulatory Review Council did not review the rule; the Department did not submit the rule to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not hold public hearings on the rulemaking; and the Attorney General has not certified the rule.

R8-3-206. Other User Fees

Using organizations are subject to reimbursable costs associated with their scheduled use of Arizona Army National Guard ranges, training areas, and facilities. Costs normally charged back to the user include electricity, phone service, water, gas, linen service, portable latrines, and the like. Such charges are assessed on a pro rata basis. When levied, such charges are computed by the Arizona Army National Guard and agreed to in advance by the requesting organization.

Historical Note

Adopted effective January 31, 1994, pursuant to an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 94-1).

Exhibit 1. Non-exclusive License Agreement to Use Ranges, Training Areas, and Facilities

**ARIZONA ARMY NATIONAL GUARD
NON-EXCLUSIVE LICENSE AGREEMENT
TO USE
RANGES, TRAINING AREAS, AND FACILITIES
AGREEMENT NO. _____**

This License AGREEMENT, made and entered into this _____ day of _____, 19____ by and between the Adjutant General of the Arizona National Guard and _____, hereinafter referred to as licensee;

WITNESSETH;

The Adjutant General, in consideration of \$1.00 and other good and valuable consideration, hereby grants a non-exclusive license to the licensee to use the ranges, training areas, and facilities described in the Arizona Army National Guard (AZ ARNG) TRAINING SITE REQUEST form, a copy of which is attached hereto.

This non-exclusive license is granted to the licensee upon the following terms and conditions:

1. Licensee shall comply with AZ ARNG Regulation 350-6, AZ ARNG Pamphlet 350-6, and all applicable statutes, laws, ordinances, rules, and regulations of the United States and those adopted by the state, city, other body politic, and the Arizona Army National Guard which pertain to the use of the ranges, training areas, and facilities described in the attached TRAINING SITE REQUEST form;
2. The licensee shall pay the applicable fee as established in AZ ARNG Regulation 350-6;
3. The licensee shall not use any other ranges, training areas, and facilities not listed on the attached TRAINING SITE REQUEST form;
4. This non-exclusive license is personal to the licensee and may only be used by the licensee and its members and the permission to use the ranges, training areas, and facilities may not be assigned or transferred to any other person without the prior written consent of the Adjutant General;
5. Upon completion of the use of the ranges, training areas, and facilities, the licensee shall promptly remove all of the licensee's equipment from the same;
6. Licensee shall not offer nor permit any intoxicating or alcoholic beverage to be sold, offered for sale, exposed for sale, stored, given away, or otherwise disposed of, or consumed in or upon the ranges, training areas, and facilities covered by this agreement nor upon any state or federal property connected to the same;
7. The licensee shall provide liability insurance and a certificate of same shall be filed with the Training Site Support Division, Office of the Deputy Chief of Staff for Plans Operation and Training of the Arizona Army National Guard *prior to the time of signing this agreement*. Insurance coverage shall be provided in the minimum limits of \$1,000,000/\$1,000,000 for bodily injury and \$100,000 for property damage and shall show the United States of America, State of Arizona, and the Arizona National Guard as additional insureds;
8. The licensee agrees to indemnify and save harmless the United States of America, the Adjutant General of the State of Arizona, the State of Arizona, the Arizona National Guard and their officers, agents, and employees against any and all loss, damage, injury, or liability that may be suffered or incurred by them or any of them, caused by or arising out of or any way connected with the use of the aforementioned ranges, training areas, and facilities or any part thereof, or any state or federal property attached thereto, by the licensee or any of the licensee's members or associates;
9. The permission granted hereunder to use the designated ranges, training areas, and facilities may be revoked at any time by the Adjutant General;
10. The licensee understands and agrees that he does not and shall not at any time have or claim any interest or estate of any kind or extent whatsoever in the ranges, training areas, and facilities requested and approved herein by virtue of this non-exclusive license or the licensee's occupancy or use hereunder;
11. It is understood and agreed that the licensee's permission to use the ranges, training areas, and facilities covered by this non-exclusive license shall begin on the ____ day of _____, 19 ____ and shall expire on the ____ day of _____, 19 ____ unless sooner terminated by the Adjutant General.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year first above written.

THE ADJUTANT GENERAL

By _____

By _____

The printed portion of this Non-exclusive License to use ranges, training areas, and facilities, AGO Form 350-6-1-R (JAN 93), is approved as to form this 10th day of December, 1992. This approval is revoked if the printed portion is altered in any respect or if any addition is made to that portion other than to fill in the blank spaces as appropriate.

GRANT WOODS
Attorney General
by /s/ CHARLES S. PIERSON
Assistant Attorney General

AGO FORM 350-6-1-R (JAN 93) (Supersedes AGO Form 350-6-1, dated 1 DEC 85)

Historical Note

Adopted pursuant to an exemption from the provisions of the Administrative Procedure Act, effective January 31, 1994 (Supp. 94-1).