

State of Arizona
Governor's Regulatory Review Council
Five-Year-Review Report
Department of Emergency and Military Affairs - Division of Military Affairs
July 31, 2015

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following five-year review report. A.R.S. § 41-1056(A) requires that “[a]t least once every five years, each agency shall review all of its rules [...] to determine whether any rule should be amended or repealed. The agency shall prepare... a written report summarizing its findings, its supporting reasons, and any proposed course of action”.

DEMA has published a set of rules that appear in the Arizona Administrative Code at R8-3-1 *et. seq.* (Military Installation Fund). The Military Installation Fund rules establish guidance for DEMA administration of the Military Installation Fund program. The Military Installation Fund was established in 2004 to allocate monies as stipulated by A.R.S. § 26-262 in order to acquire private property, real estate, rights to real estate, property management, and infrastructure that is vital to the preservation of a military installation. Eighty (80) percent of fund awards shall be distributed as listed above, and specifically for purchase of, and projects on, private property owners, with the remaining twenty (20) percent awarded to cities, towns, and counties for property enhancements, capital and infrastructure improvement projects, renovations, and management of property that is considered critical to the continued success of military installations.

The Military Installation Fund was originally established within the former Department of Commerce in recognition of the large economic impact the military, their installations, and their missions have in our state. With its first acquisition round in 2006 following approval of its rules through 2008, the Military Installation Fund acquired 18 private properties and funded four political subdivision military protection or enhancement projects. In 2009, the Military Installation Fund was swept and the statutory appropriation was repealed. In 2010, the Department of Commerce was dissolved and the Military Installation Fund, along with the Military Affairs Commission which recommends awards from the fund, were transferred to DEMA per Laws 2010, 2nd Regular Session, Ch. 208, § 3, Senate Bill 1350. The Military Installation Fund rules were transferred to 8 A.A.C. 3, Article 1 from 20 A.A.C. 1, Article 5, published in 18 A.A.R. 848, effective March 15, 2012 and amended by final rulemaking in 19 A.A.R. 588, effective March 5, 2013.

The first and only Military Installation Fund acquisition round performed by DEMA under the authority of these rules is expected to be completed in September 2015, with the successful funding of private property acquisitions of 27 acres near Luke AFB Auxiliary Field #1 and 30 acres near Davis-Monthan AFB, a conservation easement protecting 900 acres near Fort Huachuca, an aviation easement over 54 acres bordering Luke AFB, and match funding for political subdivision projects for buffer zone development and traffic improvement projects adjacent to Davis-Monthan AFB and a study to relocate the Yuma County Fairgrounds from its current location within the crash potential zone of Marine Corps Air Station – Yuma. This acquisition round totaled nearly \$5 million, which was the remaining balance available when the fund was transferred from the Department of Commerce to DEMA in 2010. A second round utilizing an appropriation of \$2.5 million in Fiscal Year 2015 was announced in February 2015, and is expected to begin the evaluation and recommendation process in October 2015. The current balance of the Military Installation Fund is 3,936,000, which includes the FY2015 appropriation of \$2.5 million and the remaining funds to be expended for the current acquisition round.

INFORMATION THAT IS IDENTICAL FOR RULES IN ARTICLE 1

- R8-3-101. Definitions**
- R8-3-102. Notice of Application Deadline and Public Comment Period**
- R8-3-103. Administrative Review**
- R8-3-104. Application for Approval of Expenditures of Monies or Funds**
- R8-3-105. Department Solicitation of Comments Regarding Applications for Acquisition of Private Property**
- R8-3-106. Department Scoring of Applications for Acquisition of Private Property**
- R8-3-107. Department Report to AMAC Regarding Applications for Acquisition of Private Property; Notice of Hearing**
- R8-3-108. AMAC Recommendation Regarding Applications for Acquisition of Private Property**
- R8-3-109. Process for Determining Acceptable Value for Expenditure of Funds**
- R8-3-110. Leaving an Application for Acquisition of Private Property on File**
- R8-3-111. Application for Funding for a Military Installation Preservation and Enhancement Project**
- R8-3-112. Department Solicitation of Comments Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects**

- R8-3-113. **Criteria for AMAC Evaluation of Applications for Funding for Military Installation Preservation and Enhancement Projects**
- R8-3-114. **Notice of Hearing and AMAC Recommendation Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects**
- R8-3-115. **Military Installation Preservation and Enhancement Project Reporting Requirements**
- R8-3-116. **Department Decision**
- R8-3-117. **Appeals**

The following information applies to all the rules in A.A.C. Title 8, Chapter 3, Article 1.

1. **General and Specific Statutes Authorizing Rules.**

The general enabling statutes for the Military Installation Fund rules are:

A.R.S. § 26-102(C)(5), which grants the Adjutant General general rulemaking authority for the operation of the department.

A.R.S. § 26-262(A), which establishes the Military Installation Fund and the department's administration of the program.

The specific enabling statute for the Military Installation Fund rules is:

A.R.S. § 26-262(C), which states "the department of emergency and military affairs, in conjunction with the military affairs commission established by section 26-261, shall adopt by rule procedures for receiving and evaluating applications and awarding the monies as provided by subsection G of this section."

2. **Objective of the Military Installation Fund Rules.**

The purpose of the Military Installation Fund rules, R8-3-1 *et. seq.*, is to provide guidance related to the requirements and application process for private property owners and political subdivisions seeking funding that preserves or enhances neighboring military installations, and the procedures for selecting those applications for funding per A.R.S. § 26-262 *et. seq.*

3. **Effectiveness of the Military Installation Fund Rules in Achieving Objectives.**

The effectiveness of the rules appear to be sufficient in achieving their objectives, however, only one iteration of the process has been completed since the final rulemaking became effective on March 5, 2013. Due to the lack of iterations of the application and acquisition process, it is too early to definitively evaluate the rules based on the factors identified in A.R.S. § 41-1056 (A) or determine any revisions that

are needed in the rules at this time. With the foundation and bureaucratic elements of the program re-established, the upcoming acquisition round will provide an opportunity to evaluate the effectiveness of the rules. A third acquisition round, if funded, would be valuable to validate any observations made during the second round.

4. **Consistency of Rule with State and Federal Statutes and Rules and List of Statutes or Rules Used in Determining Consistency.**

The Military Installation Fund rules noted above are the only set of state rules for determining the application and award process for the Military Installation Fund per A.R.S. § 26-262 *et. seq.* The Military Installation Fund has no intra-agency, inter-agency, or federal consistency issues with its regulations.

5. **Agency Enforcement Policy.**

These rules were consistently and fairly applied to all applicants submitting an application for funding from the Military Installation Fund. Because the Military Installation Fund program was dormant since the last appropriation in 2008 through 2013, the time needed for the department to complete the due diligence requirements and execute a purchase agreement for the current private property acquisition round exceeded the nine-month timeframe defined in the rules. The nine-month time frame was met for the recommended political subdivision military preservation or enhancement projects in the current round. Since the foundation has been re-established, the department expects to meet all timeframes established in R8-3-1 *et. seq.*

6. **The Clarity, Conciseness, and Understandability of the Rules.**

The rules are clear, well explained, concise, and generally understandable by the public.

7. **Criticisms Received During the Previous Five Years.**

DEMA has not received any written or verbal criticism of the rules during the past three years in which DEMA has administered the program, nor is aware of any criticism in the previous two years in which the program was administered by the Department of Commerce.

8. **Estimated Economic Impact.**

DEMA believes the Military Installation Fund has a positive economic, small business, or consumer impact as anticipated in the 2013 EIS from the final rulemaking. According to the 2008 Alan Maguire Company report entitled *Economic Impact Of Arizona's Principal Military Operations*, the military installations in Arizona and their missions have a \$9.12 billion impact on the statewide economy, and preserving the installations is in the best economic interest of Arizona. The Military Installation Fund provides a means by which to preserve military installations by supporting compatible use or economic

development of the neighboring land. For land unable to be compatibly developed, property owners are compensated fair market value for their land deed, which contributes to the preservation of the military installation by reducing pressure from encroachment.

The future economic benefit of the Fund will not be sustained without future funding to support the intent of the program. The original EIS predicted that the former annual appropriation of \$4.825 million dollars would not be sufficient to compensate all private property owners statewide who are impacted by a neighboring military installation because of the number of private property owners affected, which has been confirmed over the history of the program and exasperated by the delay incurred during the transfer of the Military Installation Fund from the Department of Commerce to DEMA from 2010 to 2013. Continued funding of the program will support the beneficial economic impact the program has to the state.

9. **Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States.**

No such analysis has been submitted by any party to DEMA.

10. **If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report.**

DEMA incorporated the recommendations from the previous Five-Year Review Report submitted by the Department of Commerce in 2010 when the rules were amended and promulgated by DEMA in 2013.

11. **A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective.**

As a voluntary program, the Military Installation Fund rules do not impose any unnecessary burdens or costs. The only costs that may be incurred through compliance of the rules are nominal administrative and mailing costs for application submission. The Military Installation Fund covers all due-diligence costs that may be incurred as a result of an application receiving a recommendation for funding. If a private property application is recommended for funding, the applicant pays the standard seller costs that are normal and customary in a property or real estate interest acquisition. Private property owners accept these costs and apply voluntarily because they believe the minimal cost of complying with the application procedures established by these rules and the standard selling costs is greatly outweighed by the benefits of selling their proposed property. The primary benefit is receiving fair market compensation to support the compatible development of their land or the acquisition of land that they are unable or unwilling to develop in a way that conforms to the compatible use standards adopted by the state or local

political subdivision. This in turn protects the nearby military installation from incompatible development that may threaten its mission or existence. Political subdivision applicants accept the nominal administrative costs as they are typical and customary for grant applications and the Military Installation Fund provides critical gap funding for projects that the political subdivision is undertaking to support, protect, and enhance the military installation(s) in their community.

12. **A Determination That the Rule is Not More Stringent Than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law.**

There are no federal requirements for the Military Installation Fund. The Military Installation Fund rules are designed to implement A.R.S. § 26-262 *et. seq.*

13. **For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits).**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of Action Regarding Project Challenge Rules.**

No future course of action regarding Military Installation Fund rules is currently planned for the next five years.

ANALYSIS OF INDIVIDUAL RULES

CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS -

DIVISION OF MILITARY AFFAIRS

ARTICLE 1. MILITARY INSTALLATION FUND

R8-3-101 Definitions

Objective: To define the terms and statutory references used within Article 1 related to the Military Installation Fund to make the rules understandable to the public, private property applicants and political subdivision applicants. This provides consistent, concise interpretation of the rules that reduce unnecessary repetition of the terms' definitions and citations to statute.

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

Objective: To provide an adequate amount of time to the public, private property owners, and political subdivisions to prepare and submit an application for funding from the Military Installation Fund, and ensure that the application and comment period is published through multiple government sources to provide multiple locations to inform potential applicants and the public about the opportunity.

R8-3-103 Administrative Review

Objective: To provide for a review of received applications for funding from the Military Installation Fund within a timely manner after the close of the application acceptance period and to ensure that those applications meet award criteria and contain all necessary information for consideration so that an application is not unwittingly disqualified. This allows all applicants to receive a fair opportunity to compete for a grant whose future availability of funding is unpredictable.

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

Objective: To describe and itemize the information that is required in a private property application to the Military Installation Fund in order to be considered for approval, and to ensure the information is current when considered by the scoring committee and Military Affairs Commission. This provides uniform criteria for all applicants, informs applicants of the materials that will be needed to efficiently submit an application, and prevents any misunderstanding of what is to be included in the application packet.

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

Objective: To enable military installations and political subdivisions an opportunity to comment on a private property acquisition application and to inform the applicant that the Department will solicit comments regarding their application from the military installation and political subdivision near their property. Comments received from the military installations or political subdivisions allows the Military Affairs Commission to evaluate the applications independent of the applicant's assertions, helping to ensure that the applications which provide the greatest benefit to the state's military installations are ultimately funded.

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

Objective: To direct how the Department scores applications for private property acquisitions to maintain objectivity in the scoring process and provide transparency to the applicant and public. In addition, the rule ensures that the scoring of applications correspond to areas that are recognized in state statute as impacted by the neighboring military installation. The scoring of the applications as directed by the rule also facilitates the Department to develop an impartial recommendation for funding distribution to submit to the Military Affairs Commission.

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

Objective: To inform the Military Affairs Commission of all complete applications received by the Department, comments made by the public and military installations, the application scores as determined by the Department and R8-3-106, and funding availability. This information allows the Military Affairs Commission to evaluate the applications independently by providing context in their consideration of the Department's recommendations, helping to ensure that the applications which provide the greatest benefit to the state's military installations are ultimately funded. The rule also ensures those who submitted an application for funding are informed of the Department's score and recommendation status of their application, and are notified in advance of any meeting in which their application is to be discussed so that applicants have the opportunity to attend. The meeting is the venue at which the Commission formalizes its funding recommendations for private property applications to the Department.

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

Objective: To have the Military Affairs Commission evaluate applications based upon all available information, including oral testimony from the applicants if needed, and make

application funding recommendations to the Department that are in the best interests of preserving and/or enhancing neighboring military installations and the state.

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

Objective: To ensure monies disbursed from the Military Installation Fund are done so judiciously at the best value to the state and in accordance with state statute.

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

Objective: Recognizing that applications for funding often exceed availability of funding and that applicants will continue to submit an application until funded, applicants are permitted to leave an application on file for consideration for up to five years to streamline the reapplication process. The rule ensures the applicant intends to be considered for future funding opportunities by requiring the applicant to opt-in upon receiving notice from the Department of a future application period, and either confirm the information in the application is current and accurate or provide updated information to the Department.

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

Objective: To describe and itemize the information that is required in a military installation preservation or enhancement project application from a city, town, or county to the Military Installation Fund in order to be considered for approval. This provides uniform criteria for all applicants, informs applicants of the materials that will be needed in order to efficiently submit an application, and prevents any misunderstanding of what is to be included in the application packet.

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

Objective: To provide military installations an opportunity to comment on a military installation preservation or enhancement project application from a city, town, or county, as an application by its nature asserts that the project enhances and preserves the military installation. Comments received from the military installations allow the Military Affairs Commission to evaluate the applications independent of the applicant's assertions, helping to ensure that the applications which provide the greatest benefit to the state's military installations are ultimately funded.

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

Objective: To direct how the Commission scores applications for preservation or enhancement projects to maintain objectivity in the scoring process, provide transparency to the political subdivision applicant and public, and ensure that funding recommendations are in the best interests of the state and the state's military installations. The scoring of applications also recognizes the responsibilities of the local political subdivisions to support, preserve, and enhance their military installations by including the importance of past actions taken by the political subdivision and additional, non-Military Installation Fund monies leveraged towards completion of the project in the Commission's consideration criteria.

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

Objective: To ensure those cities, towns, and counties who submit a military installation preservation or enhancement application are notified in advance of any meeting in which their application is to be discussed so that representatives from those political subdivisions have the opportunity to attend, and if necessary, provide oral testimony in support of their application. The meeting is the venue at which the Commission formalizes its funding recommendations for project applications to the Department.

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

Objective: To receive documentation at least semi-annually on the status of projects recommended by the Military Affairs Commission and funded by the Military Installation Fund, and an accounting of expenditures from their Military Installation Fund award to ensure funding is utilized in accordance with the stated purpose in their application and Commission's recommendation.

R8-3-116 Department Decision

Objective: To provide the Department the ability to accept, reduce, or deny a recommendation for funding from the Military Affairs Commission. The rule ensures that the Department notifies the applicant and Commission of any decision to reduce or deny the funding recommendation with the reason(s) for that decision, and that the applicant is informed of their rights to appeal the Department's decision. The rule also ensures timely communication of the Department's decision to all applicants, as well as timely notification of the Department's offer to purchase and completion of the property acquisition for those recommended applications.

R8-3-117 Appeals

Objective: To provide for and inform those private property applicants of the appeals process for a Department decision in accordance with state statute.

State of Arizona
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Five-Year-Review Report
Division of Emergency Management
April 14, 2014

Pursuant to A.R.S. § 41-1056 the Arizona Department of Emergency and Military Affairs – Division of Emergency Management (ADEM) submits the following five-year review report. A.R.S. § 41-1056(A) requires that “[a]t least once every five years, each agency shall review all of its rules [...] to determine whether any rule should be amended or repealed. The agency shall prepare... a written report summarizing its findings, its supporting reasons, and any proposed course of action”.

ADEM has published a set of rules which appear in the Arizona Administrative Code at R8-2-701 *et. seq* (ADEM Rules). The ADEM rules establish guidance for ADEM regarding the registration of volunteer emergency workers.

INFORMATION THAT IS IDENTICAL FOR RULES IN ARTICLE 7

R8-2-701 Scope

R8-2-702 Registration

R8-2-703 Required Registration Information

R8-2-704 Registration Denial or Revocation; Denied Compensation

The following information applies to all the rules in A.A.C. Title 8, Chapter 2, Article 7.

1. **General and Specific Statutes Authorizing Rules.** The general enabling statutes for the ADEM rules are A.R.S. § 26-301 *et. seq* and § 26-314 *et. seq*. The specific enabling statutes for the ADEM rules are:

A.R.S. § 26-301(7), which defines “Emergency worker” as “any person who is registered, whether temporary or permanent, paid or volunteer, with a local or state emergency management organization for the purpose of engaging in authorized emergency management activities or performing emergency functions, or who is an officer, agent or employee of this state or a political subdivision of this state and who is called on to perform or support emergency management activities or perform emergency functions.”

A.R.S. § 26-314(B), which defines the “immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workers’ compensation and other benefits that apply to the activity” of emergency workers when performing emergency management activities in Arizona and political subdivisions of Arizona.

A.R.S. § 26-314(E), which states, “The division shall adopt rules prescribing the procedures for registration of emergency workers.”

2. **Objective of the ADEM Rules.**

The purpose of the ADEM rules, R8-2-7 *et. seq.*, is to provide procedures and guidance for registering of volunteer emergency workers, which is a prerequisite for volunteer emergency workers to be eligible for benefits and legal protections under A.R.S. § 26-314.

3. **Effectiveness of ADEM Rules in Achieving Objectives.**

To date the rules created have effectively and efficiently provided the guidance necessary for ADEM and other agencies of the state and political subdivisions of the state to register volunteer emergency workers and offer those volunteer emergency workers the benefits and legal protections entitled to them under A.R.S. § 26-314.

4. **Consistency of Rule with State and Federal Statutes and Rules and List of Statutes or Rules Used in Determining Consistency.**

The ADEM rules noted above are the only set of rules for registering volunteer emergency workers, including temporary workers, which provide those volunteer emergency workers, as defined by A.R.S. § 26-301, the benefits and legal protections prescribed by A.R.S. § 26-314.

ADEM has no intra-agency or inter-agency consistency issues with its regulations. There are no Federal statutes governing registration procedures of emergency workers.

5. **Agency Enforcement Policy.**

These rules are consistently and fairly applied throughout the state by ADEM and other agencies of the state and political subdivisions of the state to register volunteer emergency workers, including temporary emergency workers.

Registration is required to extend volunteer emergency workers the benefits and legal protections afforded to them under A.R.S. § 26-314.

6. **The Clarity, Conciseness, and Understandability of the Rules.**

The ADEM rules are short and generally understandable.

7. **Criticisms Received During the Previous Five Years.**

ADEM has not received any written or verbal criticism of the rules during the past five years.

8. **Estimated Economic Impact.**

ADEM believes there has been minimal or no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules. State agencies and political subdivisions have born minimal cost to register volunteers as compared to benefits directly received from these rules by having a set of guidelines to follow when registering volunteer emergency workers. There are approximately 300 volunteer emergency workers currently affiliated with disaster relief and non-governmental organizations that are able to register with the state or political subdivisions through these rules and readily deploy throughout the state to assist with an emergency. This is in addition to the temporary emergency workers that will volunteer and register through these rules to serve during a specific emergency. To provide one example that demonstrates the economic benefit to the state and political subdivisions, over the past year volunteer emergency workers have donated over 40,000 hours in support of the Yarnell Hill fire. Based on the 2008 EIS example of volunteer emergency workers saving the state and/or its political subdivisions \$10 per hour, this translates into a benefit of over \$400,000.00 for this one emergency.

9. **Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States.**

No such analysis has been submitted by any party to ADEM.

10. **If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report.**

The rules were effective January 31, 2009; therefore, this is the first five-year-review report for these rules.

11. **A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective.**

The ADEM rules do not impose any unnecessary burdens or costs. The only costs that may be incurred through compliance of these rules, which was established with the original making of the rules, are the cost of forms for registration, maintaining a current database of emergency workers, and for criminal history and driving record background checks required for the registration of permanent emergency workers.

ADEM believes the rules impose the least burden necessary for the rules to accomplish their regulatory objective and to protect the public's health, safety, and welfare. ADEM believes the costs are outweighed by the benefits of registration procedures, including the cost of criminal history and driving record background checks for permanent emergency workers. Criminal history background checks

ensure registered emergency workers do not have a history of felony convictions or misdemeanor convictions involving moral turpitude, which is a necessary consideration when utilizing an individual's services with a population that is potentially vulnerable during an emergency. Similarly, driving record background checks ensure volunteers with a history of traffic violations or a suspended driver' license are not assigned driving related responsibilities. Maintaining a current database of emergency workers and performing the stated background checks are significantly less expensive for the state and political subdivisions of the state compared to spending monies on outside services and overtime hours.

12. **A Determination That the Rule is Not More Stringent Than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law.**

There are no Federal requirements for the registration of emergency workers. The ADEM rules are designed to implement A.R.S. § 26-314.

13. **For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits).**

All of the provisions contained in the ADEM regulations were adopted prior to July 29, 2010. No rules have been amended since that date.

14. **Course of Action Regarding ADEM Rules.**

Although ADEM has not received any criticism of the rules or experienced any issue in consistently implementing the rules as currently written, ADEM intends to amend R8-2-704 to include misdemeanor convictions involving moral turpitude as grounds for the denial or revocation of emergency worker registration, and to include the ability of the registering authority to deny or revoke registration of an emergency worker at their discretion. ADEM also intends to add R8-2-705 to create a definitions section in the rules to ensure clarity. These two rule amendments will further ensure consistency within the rule language. ADEM intends to submit a rulemaking to the Council within 12 months of the expiration of the rulemaking moratorium.

ANALYSIS OF INDIVIDUAL RULES

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS - DIVISION OF EMERGENCY MANAGEMENT ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

R8-2-701 Scope

A. **Objective:** To provide the public with the scope of applicability for the rules within Article 7. This will prevent confusion on behalf of the state, political subdivisions of the state, and the public regarding to whom the rules and registration process apply, and what protections the registration procedures provide to registered volunteer emergency workers.

R8-2-702 Registration

A. **Objective:** To specify that an individual must be registered with an entity of the state or political subdivision of the state as an emergency worker in order to qualify for the benefits and legal protections provided by A.R.S. § 26-314 *et. seq.*, which alleviates confusion and helps direct volunteers to the appropriate place to register as an emergency worker. The objective of this rule is also to make those wishing to register as an emergency worker aware that the information they provide may be used to perform a criminal history and driving record background check. Performing criminal history and driving record background checks on individuals who register as emergency workers protects the public health, safety, and welfare from individuals who may either be unqualified to serve or perform certain activities as an emergency worker, or those considered undesirable to serve as an emergency worker to a potentially vulnerable population. Additionally, the objective of this rule is to create the mechanism for maintaining a ready reserve of registered volunteer emergency workers by requiring annual reviews of registered workers, and to design the mechanism to provide for the registering of temporary emergency workers to rapidly augment those who are permanently registered and manage the public's willingness to volunteer and assist during an emergency.

R8-4-703 Required Registration Information

A. **Objective:** To establish the minimum amount of information required to register with the state or a political subdivision of the state as an emergency worker that imposed the least burden upon the registrant while identifying eligibility to serve and unique skill-sets that could be potentially applicable. This completed information provides the state or a political subdivision of the state with the appropriate amount of information to register an individual as a temporary emergency worker per the procedures identified in R8-2-702 as well as maintaining the individual as a registered emergency worker that is annually reviewed and updated.

R8-2-704 Registration Denial or Revocation; Denied Compensation

A. **Objective:** To identify the circumstances under which the registration of an emergency worker, and the benefits and legal protections that designation entails, may be denied or revoked. These procedures are inherently necessary to protect the public health, safety, and welfare from emergency workers who are unable or unqualified to serve, either due to a health condition that limits their ability to serve in an emergency environment, by being untruthful in completing the application process, or by having a history of conviction for a felony or misdemeanor involving moral turpitude.

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DEMA has published a set of rules which appear in the Arizona Administrative Code at R8-5-1 *et. seq.* (Project ChalleNGe Rules). The Project ChalleNGe rules establish guidance for DEMA in administering the Project ChalleNGe program. Project ChalleNGe is a national educational program founded by the National Guard Bureau and National Guard Youth Foundation to serve young individuals who have dropped out of high school. The Arizona National Guard was given statutory authority to implement Arizona's Project ChalleNGe by A.R.S. § 26-102(C)(9), which allows the Arizona National Guard to “establish an educational program for persons who have previously dropped out of high school and who are under twenty years of age but who are not adjudicated delinquent.” Conducted in a paramilitary environment, “the goal of the educational program is to provide persons enrolled in the program with the knowledge and skills necessary to become productive citizens and to obtain a general equivalency diploma.” DEMA suspended Project ChalleNGe in 2012 due to a lack of funding, and a determination on the future of the program has not yet been determined.

INFORMATION THAT IS IDENTICAL FOR RULES IN ARTICLE 1

R8-5-101 Definitions

R8-5-102 Project ChalleNGe: Cadet Prerequisites

R8-5-103 Project ChalleNGe Application

R8-5-104 Procedure for Selecting Cadets

R8-5-105 Project ChalleNGe: Mentor Requirements

R8-5-106 Project ChalleNGe Mentor Application

The following information applies to all the rules in A.A.C. Title 8, Chapter 5, Article 1.

1. General and Specific Statutes Authorizing Rules. The general enabling statute for the Project ChalleNGe rules is:

A.R.S. § 26-102(C)(5), which states the adjutant general shall “Adopt, with the approval of the governor, rules necessary for the operation of the department.”

The specific enabling statute for Project ChalleNGe is:

A.R.S. § 26-102(C)(9), which states the adjutant general shall “Establish an educational program for persons who have previously dropped out of high school and who are under twenty years of age but who are not adjudicated delinquent. The educational program shall be designated ‘project challenge’, and the program shall be conducted by the national guard of Arizona in a paramilitary environment. The goal of the educational program is to provide persons enrolled in the program with the knowledge and skills necessary to become productive citizens and to obtain a general equivalency diploma. In addition to monies appropriated for the program, the adjutant general may accept and spend monies from any other lawful public or private source.”

2. Objective of the Project ChalleNGe Rules.

The purpose of the Project ChalleNGe rules, R8-5-1 *et. seq.*, is to provide guidance related to the requirements and the application process for cadets and mentors, and the procedures for selecting cadets for admission into Project ChalleNGe per A.R.S. § 26-102(C)(9).

3. Effectiveness of Project ChalleNGe Rules in Achieving Objectives.

The rules have effectively provided the guidance necessary for Project ChalleNGe to identify those individuals eligible to participate in Project ChalleNGe as a cadet or mentor while conforming to Project ChalleNGe national standards issued by the U.S. Department of Defense, promulgated by U.S. Department of Defense Instruction (DODI) number 1025.8, dated March 20, 2002, under the authority of Title 32 U.S.C. § 509 – National Guard Youth Challenge Program of opportunities for civilian youth. The rules detail the specific eligibility and information required for submission by each cadet and mentor applicant, and have established an effective process for selecting those cadet and mentor applicants for admission into Project ChalleNGe.

4. Consistency of Rule with State and Federal Statutes and Rules and List of Statutes or Rules Used in Determining Consistency.

The Project ChalleNGe rules noted above are the only set of state rules for determining eligibility and participation in Project ChalleNGe per A.R.S. § 26-102(C)(9). Project ChalleNGe has no intra-agency or inter-agency consistency issues with its regulations.

Project ChalleNGe rules are consistent with the National Guard Youth ChalleNGe Program established by 32 U.S.C. § 509 and governed by DODI 1025.8, and were approved by the U.S. Secretary of Defense as required by 32 U.S.C. § 509 prior to the establishment of Project ChalleNGe in Arizona. Preapproval of Project ChalleNGe's application and selection process as codified by these rules is required before the U.S. Secretary of Defense will enter into an agreement with a state to establish the program and receive Federal match-funding.

5. **Agency Enforcement Policy.**

These rules were consistently and fairly applied to all cadet and mentor applicants wishing to participate in Project ChalleNGe, and for the selection of cadet and mentor applicants admitted into Project ChalleNGe when the program was active. Project ChalleNGe was suspended in 2012 by DEMA due to a lack of state funding that is required to receive matching Federal funding.

6. **The Clarity, Conciseness, and Understandability of the Rules.**

Project ChalleNGe rules are short and generally understandable.

7. **Criticisms Received During the Previous Five Years.**

DEMA has not received any written or verbal criticism of the rules during the past five years.

8. **Estimated Economic Impact.**

DEMA believes there has been minimal or no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules while the Project ChalleNGe was active. Project ChalleNGe was suspended in 2012 by DEMA due to a lack of state funding that is required to receive matching Federal funding. A determination on the future of the program has not yet been determined, but a decision to resume the program would continue to expect minimal or no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules.

9. **Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States.**

No such analysis has been submitted by any party to DEMA.

10. **If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report.**

The rules were effective January 31, 2009; therefore, this is the first five-year-review report for these rules.

11. **A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective.**

Project ChalleNGe rules do not impose any unnecessary burdens or costs. The only costs that may be incurred through compliance of the rules for cadet applicants are those for the necessary medical, dental and psychological evaluations required to be submitted with the Project ChalleNGe application. These evaluations are necessary to ensure a cadet applicant has the physical and mental health required to participate with reasonable accommodation for physical and other disabilities in a challenging, voluntary military-based residence educational program for high school dropouts possessing the desire to succeed. Individuals apply voluntarily because they believe the minimal cost of complying with the application procedures established by these rules is greatly outweighed by the benefits of being selected to participate in and complete the program. These benefits include providing a second chance for cadets to complete high school, receive their general equivalency diploma, and become better prepared for employment and/or other higher education opportunities.

12. **A Determination That the Rule is Not More Stringent Than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law.**

Project ChalleNGe rules are consistent with the national National Guard Youth ChalleNGe Program established by 32 U.S.C. § 509 and DODI 1025.8. Preapproval of Project ChalleNGe's application and selection process as codified by these rules is required before the U.S. Secretary of Defense will enter into an agreement with a state to establish the program and receive Federal match-funding, thus ensuring the rules are not more stringent than corresponding Federal law. In addition, the rules mirror the minimum requirements established by DODI 1025.8; therefore they are not more stringent than Federal law.

13. **For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits).**

All of the provisions contained in the Project ChalleNGe regulations were adopted prior to July 29, 2010. No rules have been amended since that date.

14. **Course of Action Regarding Project ChalleNGe Rules.**

No future course of action regarding Project ChalleNGe rules is planned for the next five years. Resumption of Project ChalleNGe will not require any amendments to the rules.

ANALYSIS OF INDIVIDUAL RULES

CHAPTER 5. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS - PROJECT CHALLENGE ARTICLE 1. PROJECT CHALLENGE

R8-5-101 Definitions

A. **Objective:** To define the terms used within Article 1 related to Project Challenge to make the rules understandable to the public and potential cadet and mentor applicants. This will provide consistent, concise interpretation of the rules that reduce unnecessary repetition of the terms' definitions.

R8-5-102 Project Challenge: Cadet Prerequisites

A. **Objective:** To identify the prerequisites an individual must meet in order to participate in Project Challenge as a cadet. Project Challenge is designed to offer high school dropouts a second chance to complete high school and earn a general equivalency diploma and other life-skills in a paramilitary environment based on a national model approved by the U.S. Department of Defense. This rule also ensures compliance of Project Challenge with the requirements provided by the U.S. Department of Defense Instruction (DODI) number 1025.8, dated March 20, 2002, under the authority of Title 32 U.S.C. § 509 – National Guard Youth Challenge Program of opportunities for civilian youth. Compliance with those Federal regulations are required to maintain the Project Challenge program and receive Federal matching funds to support the program.

R8-5-103 Project Challenge Application

A. **Objective:** This rule is required to ensure compliance with the eligibility criteria established by R8-5-102, which is based on Federal requirements provided by DODI 1025.8. The application process established by this rule also requests the necessary medical, dental and psychological evaluations that are required to ensure a cadet applicant has the physical and mental health required to participate with reasonable accommodation for physical and other disabilities in this challenging, voluntary military-based residence educational program. The rules also requests various legal, permission, and waiver forms to be provided by the applicant's parent(s) or legal guardian(s) to ensure Project Challenge has the permission and support of the applicant's parent(s) or legal guardian(s), as well as the legal means to provide care and services for the cadet applicant. Last but not least, this rule has the objective of to ensure the applicant wants to voluntarily participate in Project Challenge.

R8-5-104 Procedure for Selecting Cadets

A. **Objective:** The rule was adopted to ensure the transparency of the selection process and inform the public and cadet applicants of the additional considerations that are taken into account to determine if

an applicant is selected for admission as a cadet. This rule ensures compliance with DODI 1025.8, which requires Project Challenge to give consideration to the diverse population in the state during the selection process. This rule also provides a preference for older applicants in the selection process because older applicants are at risk of aging out of program eligibility, therefore the rule prioritizes those equally qualified applicants who are older.

R8-5-105 Project Challenge: Mentor Requirements

A. **Objective:** This rule was adopted to establish and inform mentors of the eligibility and responsibility requirements that being a mentor entails so they are prepared for the long-term, voluntary commitment they are making to the success of the cadet. Likewise, this rule helps Project Challenge cadets understand whom they can and cannot select as a mentor, and details what the cadet should expect from their mentor after completion of the residency portion of the program.

R8-5-106 Project Challenge Mentor Application

A. **Objective:** To define the information an eligible individual must complete and submit to Project Challenge in order to apply to participate as a mentor. These application requirements were adopted to ensure an individual is appropriate to be a cadet's mentor, and that they understand their commitment they are making to the cadet and agree to the responsibilities of being a mentor as established by R8-5-105.