NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

[R05-276]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 2	Amend
R4-16-206	Amend
R4-16-207	Amend
Table 1	Amend

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

Authorizing statutes: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

Implementing statutes: A.R.S. §§ 32-1422 through 32-1433 and 41-1073

3. The effective date of the rules:

September 10, 2005

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 1198, March 25, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1170, March 25, 2005

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

Name: George R. Pavia, Rules/Policy Analyst

Address: 9545 E. Doubletree Ranch Rd.
Scottsdale, AZ 85258-5514

Telephone: (480) 551-2769

Fax: (480) 551-2828

E-mail: gpavia@azmdboard.org

Please visit the board web site to track progress of this rule and any other agency rulemaking matters at www.azmdboard.org.

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

The agency is amending its licensing time-frame rules to bring them into conformity with current Board licensing procedure. In this action, the Board is amending the Article 2 heading to "Licensure" to complete Chapter renumbering not entirely possible in an earlier Notice of Recodification. The agency will also incorporate global linguistic and stylistic modifications to ensure the rules remain in conformity with current publishing requirements of the Governor's Regulatory Review Council and the Secretary of State's Office.

This rulemaking occurs as a course of action indicated in five-year rule review F-02-1003 approved by the Governor's Regulatory Review Council on October 1, 2002.

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

The Board did not rely on any study for this rulemaking.

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

Not applicable

9. The summary of the economic, small business, and consumer impact:

The economic impact of agency licensing time-frame provisions involves the following entities and impact factors:

a. Physicians would normally experience minimal costs for professional licensure or renewal within specified time-frames. Costs could become moderate to substantial for loss of revenue waiting for licensure in cases of application information deficiency or renewal after license expiration. Physicians stand to experience substantial benefits in professional income from correct licensure or renewal.

b. Clinics or hospitals employing licensed physicians experience no direct costs from physician licensing time-frame requirements. These business entities, however, could experience not-readily-quantifiable costs in staff coverage if the need arises to wait for a physician to become licensed or renew licensure after expiration.

c. The Arizona Medical Board experiences substantial costs of approximately $462,068 per year of an aggregate $4.9 million operating budget to staff and operate its licensing division office function. The agency benefits substantially with total annual revenues of $5.3 million of which 95% is derived from physician licensure, all sources.

d. The private consumer of healthcare services experiences no direct costs from the agency's licensing time-frame regulations. The consumer receives not-readily-quantifiable benefits in individual safety from the assurance of healthcare service integrity when practicing physicians are appropriately licensed in a timely fashion.

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

On Table 1, an arithmetical inconsistency was corrected in the overall time-frame as the sum of the administrative review and substantive review time-frames. This was a technical change to correct an error; no change in the existing regulatory provision is involved.

The Board also made minor grammatical and structural changes according to recommendations made by Governor's Regulatory Review Council staff.

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

The agency did not receive any comments on this rulemaking.

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

Not applicable

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

None

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

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 2. ~~RENUMBERED~~ LICENSURE

Section
R4-16-206. Time-frames for Licenses, Permits, and Registrations
R4-16-207. Time-frames for License Renewal; Expiration
Table 1. Time-frames

ARTICLE 2. ~~RENUMBERED~~ LICENSURE

R4-16-206. Time-frames for Licenses, Permits, and Registrations

A. For each type of license, permit, or registration issued by the Board, the overall time-frame ~~described in~~ under A.R.S. § 41-1072(2) is ~~listed in~~ shown on Table 1.

B. For each type of license, permit, or registration issued by the Board, the administrative completeness review time-frame ~~described in~~ under A.R.S. § 41-1072(1) is ~~listed in~~ shown on Table 1 and begins on the date the Board receives an application and all required ~~documents~~ documentation and information.

1. If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant~~, a deficiency notice~~.
   a. ~~The notice shall state each deficiency and the information needed to complete the application and documents.~~ In the deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation. In the deficiency notice, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
   b. Within the time provided in Table 1 for response to a deficiency notice, ~~beginning on the date of mailing of a deficiency notice, an~~ the applicant shall submit to the Board the ~~missing documents and~~ requested documentation or information specified in the notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date ~~the Board mails the deficiency notice to the applicant~~ of the notice until the date the Board receives the ~~missing~~ requested documentation ~~and~~ or information from the applicant.
   ~~c. Under A.R.S. § 32-1427(E), an applicant for an initial license by examination or endorsement who disagrees with the deficiency notice may request a hearing before the Board at its next regular meeting if there is time at that meeting to hear the matter. The Board shall not delay a requested hearing beyond one regularly scheduled meeting. At any hearing granted under this subsection, the applicant shall have the burden of proof to demonstrate that the alleged deficiencies do not exist.~~
   ~~d. Under A.R.S. § 32-1427(F), if an applicant for initial license by examination or endorsement does not submit the missing documents and information indicated in the deficiency notice within the time-frame specified in subsection (B)(1)(b), the Board shall deem the application withdrawn.~~
~~2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.~~
~~3. If the application and submitted documents and information do not contain all of the components required by statute and rule, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.~~
2. Within 30 days after receipt of a deficiency notice, an applicant may submit a written hearing request to the Board.
3. The Board shall schedule and conduct the applicant's deficiency hearing according to provisions prescribed under A.R.S. § 32-1427(E).
4. In addition to hearing provisions prescribed under subsection (B)(3), the Board shall send the following to the applicant in writing:
   a. A notice of a scheduled hearing at least 21 days before the hearing date; and
   b. The Board's decision within 30 days after the hearing that shall include notice of any applicable right of appeal.

C. For each type of license, permit, or registration issued by the Board, the substantive review time-frame ~~described in~~ under A.R.S. § 41-1072(3) is ~~listed at~~ shown on Table 1~~ and begins on the date the Board sends written notice of administrative completeness to the applicant~~.

~~1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit to the Board the additional information identified by the comprehensive written request within the time provided in Table 1, beginning on the date of mailing of the comprehensive written request for additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.~~
~~2. The Board shall issue a written notice of denial of license, permit, or registration if the Board determines that the applicant does not meet all of the substantive criteria required by statute and rule for a license, permit, or registration.~~
~~3. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.~~
~~4. If the applicant meets all of the substantive criteria required by statute and rule for license, permit, or registration, the Board shall issue a license, permit, or registration to the applicant.~~

1. The Board may request additional information from an applicant according to provisions prescribed under A.R.S. § 41-1075 during the substantive review time-frame. In any request for additional information, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
2. In response to a single comprehensive written request from the Board under A.R.S. § 41-1075(A), the applicant shall submit the information identified to the Board within the time to respond specified in Table 1. The time-frame for the Board to finish the substantive review is suspended from the date the Board sends the comprehensive written request for additional information until the date the Board receives the additional information from the applicant.
3. If the Board determines that the applicant does not meet all substantive criteria for a license, permit, or registration as required under A.R.S. Title 32, Chapter 13 or this Chapter, the Board shall send written notice of denial to the applicant. The Board shall include notification of any applicable right of appeal in the denial notice.
4. If the applicant meets all substantive criteria for a license, permit, or registration required under A.R.S. Title 32,

Chapter 13 and this Chapter, the Board shall issue the applicable license, permit, or registration to the applicant.

R4-16-207. Time-frames for License Renewal; Expiration

A. For ~~renewal of licensure~~ license renewal, the overall time-frame ~~described in~~ under A.R.S. § 41-1072(2) is 90 ~~calendar~~ days.

B. For license renewal ~~of licensure~~, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is ~~90 calendar~~ 45 days and begins on the date the Board receives the renewal application.

1. If the required application is not administratively complete, the Board shall send ~~to the applicant~~ a written deficiency notice to the applicant. ~~The notice shall state each deficiency and the documents and information needed to complete the renewal application.~~
   a. In a deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation.
   b. Within 60 days after the Board sends a deficiency notice, the applicant shall submit to the Board the requested documentation or information specified in the notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the requested documentation or information from the applicant.
2. ~~The 90-day time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the needed documents and information.~~
3. ~~If an applicant does not submit a complete renewal application before May 1, the applicant's license expires, except that the license of a physician who does not renew the license and who has been advised in writing that an investigation is pending at the time the license is due to expire does not expire until the investigation is resolved. The license of a physician for whom an investigation is pending is suspended on the date it would otherwise expire and the physician shall not practice in this state until the investigation is resolved.~~
4. ~~If the submitted application is administratively complete, the Board shall send a written notice of renewal to the applicant.~~
2. The provisions prescribed under R4-16-206(B)(2) through (B)(4) apply to this Section.

C. For license renewal, the substantive review time-frame under A.R.S. § 41-1072(3) is 45 days.

1. During the substantive review time-frame, the Board may request additional information according to provisions prescribed under A.R.S. § 41-1075.
2. The applicant shall submit to the Board information identified by a single comprehensive written request from the Board for additional information allowed under A.R.S. § 41-1075(A) within 60 days after the Board sends its request.
3. If the applicant meets all license renewal substantive criteria and remits the applicable fee required under A.R.S. Title 31, Chapter 13 and this Chapter, the Board shall issue a license renewal to the applicant.

D. If a person holding an active license does not apply for license renewal according to the biennial renewal requirement or fails to meet time-frame requirements under this Section, the person's license expires according to provisions prescribed under A.R.S § 32-1430(A) unless the person is under investigation according to provisions prescribed under A.R.S. § 32-3202.

Table 1. Time-frames

Time-frames (in calendar days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial License by Examination	240	120	365	120	90
Initial License by Endorsement	240	120	365	120	90
Locum Tenens or Pro Bono Registration	120	60	30	60	30
Temporary License	60	30	30	30	30
Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	~~10~~ 30	10	10
Training Permit	40	20	30	20	30
Short Term Training Permit	40	20	30	20	30

One-year Training Permit	40	20	30	20	30
Registration to Dispense Controlled Substances and Prescription-only Drugs and Devices	150	45	30	105	30

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

[R05-274]

PREAMBLE

1. Sections Affected **Rulemaking Action**
R12-7-103 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 27-516(A) and 27-656

Implementing statutes: A.R.S. §§ 27-516(A)(3) and 27-654

3. The effective date of the rules:
September 10, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:
Notice of Rulemaking Docket Opening: 10 A.A.R. 4122, October 8, 2004

Notice of Proposed Rulemaking: 11 A.A.R. 780, February 18, 2005

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

Name:	Steven L. Rauzi, Oil & Gas Administrator
Address:	Arizona Geological Survey 416 W. Congress, Suite 100 Tucson, AZ 85701-1315
Telephone:	(520) 770-3500
Fax:	(520) 770-3505

6. An explanation of the rule, including the agency's reason for initiating the rule:
R12-7-103 specifies bonding requirements and amounts. The agency is amending R12-7-103 to provide sufficient surety for plugging abandoned wells and to improve clarity and understandability.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable

9. The summary of the economic, small business, and consumer impact:
The rule directly impacts companies drilling for oil, gas, and geothermal resources. The rule is mostly procedural in nature and will not significantly impact the economy or consumers. There will be a moderate to significant impact on companies drilling 11 or more wells under a blanket bond. The amount of an individual well bond is not changed. The categories and amounts of blanket bonds are increased. The bond is conditioned on the performance of the operator. The proposed rulemaking will benefit the regulated community by clarifying reporting requirements. No private persons or consumers are directly affected by the proposed rulemaking.

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

Minor changes were made at the suggestion of the Governor's Regulatory Review Council's staff to improve the clarity, conciseness, and understandability of the rule.

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

No written comments were received. No oral comments were received at the May 13, 2005, oral proceeding to adopt the amended rule.

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

Not applicable

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

None

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

No.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

Section
R12-7-103. Bond

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

R12-7-103. Bond

A. An operator shall file a performance bond with the Commission ~~prior to approval of a permit to drill~~ before drilling a new well, ~~re-enter~~ re-entering an abandoned well, or ~~assume~~ assuming responsibility as the operator of an existing ~~wells~~ well. ~~The bond amount shall be $10,000 for a well drilled to a total depth of 10,000 feet or less, $20,000 for a well drilled deeper than 10,000 feet, or $25,000 as a blanket bond to cover all wells and shall be~~ Choosing one of the following options, an operator shall provide a performance bond for each well or a blanket performance bond payable to the Oil and Gas Conservation Commission, State of Arizona~~,~~ and conditioned upon the faithful performance by the operator of the duty to drill each well ~~in a manner to prevent waste~~, plug each dry or abandoned well, repair each well causing waste or pollution, ~~and~~ maintain and restore ~~the~~ each well site and otherwise act in a manner that is consistent with A.R.S. Title 27 Chapter 4 and this Chapter:

1. For individual wells, an operator shall provide a $10,000 bond for each well drilled to a total depth of 10,000 feet or less or a $20,000 bond for each well drilled deeper than 10,000 feet, or
2. For multiple wells, an operator shall provide one of the following blanket bonds to cover all wells:
   a. $25,000 for 10 or fewer wells;
   b. $50,000 for more than 10 but fewer than 50 wells; or
   c. $250,000 for 50 or more wells.

B. ~~The Commission shall accept~~ An operator shall provide a bond in the form of a surety bond, executed by the operator as principal and a corporate surety, authorized to do business in Arizona; a certified check; or a certificate of deposit at a federally insured bank, authorized to do business in Arizona.

C. Transfer of property does not release the bond. ~~If a property is transferred and the principal desires to be released from the bond, the procedure shall be as follows~~ If an operator plans to transfer a property and desires release from the bond, the following rules apply:

1. The ~~principal on the bond~~ operator shall notify the Commission in writing of the proposed transfer, ~~giving~~ providing the location of each well, the date and number of each permit to drill, and the name, address, and telephone number of the proposed transferee;
2. ~~The transferee of any well or of the operation of any well shall declare~~ The operator shall obtain from the proposed transferee a declaration to the Commission in writing, ~~acceptance of~~ accepting the transfer and ~~of the~~ responsibility ~~of~~ for each well. ~~and~~ As the new operator, the proposed transferee shall submit a new bond or bonds unless the ~~transferee's~~ transferee has previously provided a blanket bond ~~applies to the well or wells~~ that complies with subsection (A)(2).

3. ~~When~~ If the Commission approves the transfer, the transferor is released from all responsibility with respect to the well or wells, and the Commission shall notify the ~~principal~~ transferor and the bonding company in writing ~~that the transferor's applicable bond or bonds are subject to~~ of the release.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R05-279]

PREAMBLE

1. Sections Affected **Rulemaking Action**
R15-5-154 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 42-1005

Implementing statute: A.R.S. § 42-5061

3. The effective date of the rules:
September 10, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:
Notice of Rulemaking Docket Opening: 9 A.A.R. 4202, October 3, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 4254, October 22, 2004

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

Name:	Hsin Pai, Tax Analyst
Address:	Tax Policy and Research Division Arizona Department of Revenue 1600 W. Monroe, Room 810 Phoenix, AZ 85007
Telephone:	(602) 716-6851
Fax:	(602) 716-7995
E-mail:	hpai@azdor.gov

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/tra/draftdoc.htm.

6. An explanation of the rule, including the agency's reason for initiating the rule:
The Department is amending the rule to clarify requirements regarding the imposition of Arizona transaction privilege tax on retail businesses that offer services performed in connection with and related to their sales of computer hardware or software. Generally, gross receipts derived from sales of software created for the specific use of an individual customer—"custom" software—are exempt from transaction privilege tax under the retail classification found at A.R.S. § 42-5061, while gross receipts derived from sales of prewritten or "canned" software (including software earlier created for the specific use of an individual customer but later marketed to other customers) are subject to the tax.

The changes amend and remove rule language that is ambiguous, outmoded, or otherwise imprecise in explaining the Department's current position to affected taxpayers. Notably, the amending language:

a. Clarifies that gross receipts derived from modification of prewritten software for the specific use of an individual customer are not subject to transaction privilege tax if separately stated on the sales invoice and in the seller's records.
b. Eliminates erroneous information provided in previous subsection (B) of the rule that had been based on a previous Department position regarding the imposition of transaction privilege tax under the *personal property rental* classification rather than the retail classification.
c. Clarifies that the method used to sell prewritten computer software to customers (*i.e.*, through a physical medium

such as a computer disk or CD-ROM or through digital means) is irrelevant for taxation purposes.

Because A.A.C. R15-5-2342, the corresponding use tax rule addressing purchases of computer hardware and software, references "the same provisions as delineated in R15-5-154" without restating any substantive provisions, the Department has made no changes to its language.

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

The Department did not review any study relevant to the rules.

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

Not applicable

9. A summary of the economic, small business, and consumer impact:

There should be no significant economic impact to Arizona businesses or consumers arising from the rulemaking. The new rulemaking reflects already-existing Department policy and interpretation. The Department expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of taxation related to computer hardware and software will be greater than the costs.

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

Minor formatting changes have been made to the rules at the request of G.R.R.C. staff.

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

Although the Department received assistance and suggestions from the general public during early stages of drafting the amendments, the Department received no comments on the rulemaking.

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

None

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

None

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

No.

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section
R15-5-154. ~~Data Processing Equipment~~ Computer Hardware and Software

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-154. ~~Data Processing Equipment~~ Computer Hardware and Software

A. ~~Income~~ Gross receipts derived from services rendered in whole or in part in connection with the sale of ~~data processing equipment~~ computer hardware is exempt, including ~~income~~ gross receipts derived from charges imposed for professional and technological services such as analysis, design, support engineering services, classroom instruction, and data conversion services.

~~**B.** Income from the multiple use of data processing equipment where no single customer has exclusive use of the equipment for a fixed period of time, or where the customer does not exclusively control all manual operations necessary to operate the equipment is nontaxable service income.~~

~~**C.**~~**B.** Except as provided in subsection ~~(D)~~ (C), ~~the~~ gross receipts derived from the sale of ~~electronic data processing~~ computer software programs are taxable, regardless of the method that a retail business uses to transfer the programs to its customers.

~~**D.**~~**C.**~~The gross~~ Gross receipts derived from charges imposed for the following business activities originate from nontaxable service activities and are therefore not taxable:

1. The original creation of an electronic data processing program for the specific use of an individual customer, or
2. ~~or the~~ The modification of a ~~canned electronic data processing~~ prewritten computer software program for the specific use of an individual customer ~~are nontaxable service activities~~, if the charge for the modification is shown separately on the sales invoice and records.

~~**E.** When income is received from both the sale of tangible personal property and exempt services, the charges for each shall be separately stated on billings and invoices or otherwise clearly reflected in the books and records of the taxpayer. If not so separately stated, the gross income from such transactions is taxable.~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R05-275]

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R15-5-156	Amend
R15-5-2343	Amend

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

Authorizing statute: A.R.S. § 42-1005

Implementing statutes: A.R.S. §§ 42-5061(A)(8)-(13) and 42-5159(A)(16)-(21)

3. The effective date of the rules:

September 10, 2005

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 4086, September 19, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 5154, November 28, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 2782, July 9, 2004

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

Name:	Hsin Pai, Tax Analyst
Address:	Tax Policy and Research Division Arizona Department of Revenue 1600 W. Monroe, Room 810 Phoenix, AZ 85007
Telephone:	(602) 716-6851
Fax:	(602) 716-7995
E-mail:	hpai@azdor.gov

Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/tra/draftdoc.htm.

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

A.R.S. § 42-5061 imposes transaction privilege tax on the business of selling tangible personal property at retail, and A.R.S. § 42-5155 imposes use tax on the storage, use, or consumption in this state of tangible personal property purchased from a retailer or utility business. Nevertheless, both provisions provide specific exemptions for prescription drugs, prosthetic appliances, prescription eyewear, insulin and certain related supplies, hearing aids, and durable medical equipment. The agency is amending the rules to: (1) provide clearer guidance to taxpayers on the scope and application of these exemptions than is provided by the current rules, and (2) conform the rules to current statutes and rulemaking guidelines.

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

None

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

Not applicable

9. A summary of the economic, small business, and consumer impact:

There should be no significant economic impact to Arizona businesses or consumers arising from the rulemaking, although there is a potential positive impact upon these persons due to clarification regarding the tax-exempt status of certain homeopathic remedies. The new rulemaking reflects already-existing Department policy and interpretation. The amendments will benefit both the agency and the public by making the rules conform to current statutes and rulemaking guidelines, which will make the rules more accurate as well as clearer and easier to understand.

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

Comments and feedback from both the public and members of the Department prompted the following changes to the rules:

a. Proposed rules A.A.C. R15-5-156(A)(6) and R15-5-2343(A)(6) defined a "nonprescription product" as "a drug or other article that can be purchased by the consumer of the drug or article without a prescription, regardless of whether purchased on the advice or recommendation of a member of the medical, dental, or veterinarian profession." The final rules *infra* amend the definition by specifying that the drug or other article can be purchased by the *final* consumer without a prescription, thereby eliminating confusion over whether a prescription drug that is purchased without a prescription by a medical professional for resale or use in treating patients would be considered a "nonprescription product." The clarification by addition of the term "final" is nonsubstantial in nature and does not alter the effect of the provisions.

b. Proposed rules A.A.C. R15-5-156(A)(10)(b) and R15-5-2343(A)(10)(b) defined "prescription drug" in part as a "legend drug or drug that, according to federal or state law, can be dispensed only . . . [u]pon an oral prescription by the prescriber for the drug that is reduced promptly to writing and then filed by a pharmacist or the prescriber." To clarify the definition based on a comment received on the proposed rulemaking, as discussed *infra* in subsection 11, the definition has been amended to provide that the drug can be dispensed only "upon an oral prescription by the prescriber for the drug that *federal or state law requires be* reduced promptly to *a form of* writing *by the prescriber* and then filed by a pharmacist or the prescriber." The change is nonsubstantial in nature.

c. Proposed rules A.A.C. R15-5-156(B) and A.A.C. R15-5-2343(B) provided, inter alia, that gross receipts from sales of (and purchases of, for use tax purposes) "prescription drugs" as defined in (A)(10) are not subject to tax. Due to the clarification to A.A.C. R15-5-156(A)(6) and R15-5-2343(A)(6) described in subsection 10(a) *supra*, the final rule provides that "[p]rescription drugs, *including those used in the course of treating patients*," are not subject to tax (emphasis added). The clarification is nonsubstantial in nature and does not alter the effect of the provisions.

d. The final versions of A.A.C. R15-5-156(C) and R15-5-2343(C) replace references to subsection (E) with references to subsections (B) and (F) for component and repair parts for tangible personal property that are not subject to tax. The change is nonsubstantial in nature.

e. The final rules specifically provide at A.A.C. R15-5-156(E) and R15-5-2343(E) that gross receipts from the sale to (or purchases by, for use tax purposes) "the final consumer of nonprescription products and those medical supplies or appliances not provided for under subsection (B) are subject to tax." This principle was implicit but unstated in the proposed rules and has been included for added clarity and understandability to the public. The addition is nonsubstantial in nature.

f. Proposed rules A.A.C. R15-5-156(E) provided that gross receipts from the sale of nonprescription products or other medical supplies or appliances to doctors, dentists, or veterinarians are subject to tax unless the sale of nonprescription products or other medical supplies or appliances qualifies as a sale for resale and the doctor, dentist, or veterinarian is a retailer in the business of reselling the property." (The correlating use tax provision, A.A.C. R15-5-2343(E), provided the same principle regarding purchases of such tangible personal property by doctors, dentists, or veterinarians.) The final rules, in which the language can now be found in A.A.C. R15-5-156(F) and R15-5-2343(F), strike the second reference to "nonprescription products or other medical supplies or appliances" to eliminate wordiness and redundancy. The change is nonsubstantial in nature and does not alter the effect of the provisions.

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

The one substantive comment received by the Department regarding the Notice of Proposed Rulemaking addressed the fact that homeopathic physicians are required under A.R.S. § 32-2951(A)(2) to enter into the patient's medical record the name, strength, and potency of the drug dispensed, date and dosing schedule, and the number of refills and the therapeutic reason. Under the statutes governing homeopathic physicians, such written recordkeeping is required for homeopathic remedies, though actual written prescriptions are not issued for them.

Based on this comment, the Department made the amendment described *supra* in subsection 10(b) so that, insofar as the homeopathic remedy is dispensed only upon an oral prescription, that oral prescription need not be reduced to a form of writing required by federal law but can also be one that is required by state law, *e.g.*, the recordkeeping required under A.R.S. § 32-2951(A)(2).

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

None

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

None

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

No.

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section
R15-5-156. Sales of Prescription Drugs and Prosthetic Appliances

ARTICLE 23. USE TAX

Section
R15-5-2343. Purchases of Prescription Drugs and Prosthetic Appliances

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-156. Sales of Prescription Drugs and Prosthetic Appliances

A. ~~For purposes of this rule, the following definitions apply~~ In this Section:

1. "Drug" means an article that, according to federal or state law, is:
   a. Recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, official National Formulary, or any supplement to these documents; or
   b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or
   c. Not food and is intended to affect the structure or any function of the body of humans or animals; or
   d. Intended for use as a component of any article specified in subsections (a), (b), or (c).

~~1.~~2. "~~Drugs~~ Drug on a prescription" means ~~those substances which can only be dispensed on the direction of a member of the medical, dental, or veterinary profession, who is licensed by law to administer such drugs, and which cannot be purchased without such authorization. A legend drug is considered a drug on~~ a prescription drug.

3. "Food" means an article used for food or drink for humans or animals, chewing gum, or an article used as a component of such an article.

~~2.~~4. "Hearing aid" means any wearable device designed ~~for aiding~~ as a remedy or ~~compensating~~ to compensate for defective human hearing, including parts, attachments, accessories, and earmolds.

~~3.~~5. ~~A "legend~~ "Legend drug" ~~is~~ means a drug ~~which bears the statement CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION~~ that 21 U.S.C. 353(b)(4)(A) requires to bear the symbol "Rx only" before dispensing.

~~4.~~6. "Nonprescription ~~drugs~~ product" means a ~~substance which~~ drug or other article that can be purchased by the final consumer of the drug or article without a prescription, ~~even though recommended by~~ regardless of whether purchased

on the advice or recommendation of a member of the medical, dental, or veterinarian profession. Examples include over-the-counter drugs and those dietary supplements, vitamins, minerals, herbs, and other similar supplements that do not qualify as prescription drugs.

7. "Over-the-counter drug" means a drug that is subject to federal labeling requirements in 21 CFR 201.66.
8. "Prescriber" means a member of the medical, dental, or veterinary profession authorized by federal or state law to prescribe a drug.
9. "Prescription" means an order for a drug issued in any form.
5.10. "Prescription ~~drugs" are drugs on a prescription~~ drug" means a legend drug or a drug that, according to federal or state law, can be dispensed only:
   a. Upon a written prescription of a prescriber for the drug;
   b. Upon an oral prescription by the prescriber for the drug that federal or state law requires be reduced promptly to a form of writing by the prescriber and then filed by a pharmacist or the prescriber; or
   c. By refilling a written or oral prescription if refilling is authorized by the prescriber for the drug either in the original prescription or by oral order that is reduced promptly to writing and then filed by a pharmacist or the prescriber.

6.11. "Prescription eyeglasses" includes frames and other component parts of eyeglasses if purchased for use with prescription lenses.

7.12. "Prosthetic appliance" means an artificial device ~~which~~ that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

B. Gross receipts from sales of the following ~~items~~ kinds of tangible personal property are ~~deductible from the tax base~~ not subject to tax:

1. ~~Drugs on a prescription.~~ Prescription drugs, including those used in the course of treating patients;
2. Medical oxygen, pursuant to ~~statute~~ A.R.S. § 42-5061(A)(8);
3. Insulin, insulin syringes, and glucose strips, whether or not prescribed~~.~~ ;
4. Prosthetic appliances, prescribed or recommended by a statutorily-authorized individual~~.~~ ;
5. Durable medical equipment, pursuant to ~~statute.~~ A.R.S. § 42-5061(A)(13);
6. Prescription eyeglasses and contact lenses~~.~~ ; and
7. Hearing aids. Batteries and cords ~~do not qualify as exempt~~ are subject to tax.

C. ~~Unless otherwise stated,~~ Gross receipts from the sale of component and repair parts for any tangible personal property ~~included in this rule~~ that is exempt under either subsection (B) or (F) ~~is~~ are not ~~taxable~~ subject to tax.

D. If a written prescription or recommendation is required to purchase ~~the~~ tangible personal property, a vendor of the property shall maintain the ~~required~~ prescription or recommendation ~~shall be in writing and shall be maintained~~ as part of the vendor's records. The vendor's records for documenting sales shall provide reasonable detail to allow the Department, upon inspection, to identify property as exempt.

E. Gross receipts from the sale to the final consumer of nonprescription products and those medical supplies or appliances not provided for under subsection (B) are subject to tax.

~~E.~~F. Gross receipts from the sale of nonprescription ~~drugs and~~ products or other medical supplies or appliances to doctors, dentists, or veterinarians are ~~taxable~~ subject to tax unless ~~otherwise exempt.~~

~~1. Gross receipts from~~ the sale ~~of nonprescription drugs and other medical supplies to doctors, dentists, and veterinarians are not taxable if the tangible personal property~~ qualifies as a sale for resale and the doctor, ~~dentists~~ dentist, or veterinarian is a retailer in the business of reselling ~~such~~ the property.

~~2. Gross receipts from the sale of prescription drugs, for use in the course of treating patients, are not taxable if the prescription drugs are sold to a doctor, dentist, or veterinarian who is licensed by law to administer prescription drugs.~~

~~3. Gross receipts from the sale of prescription drugs are not taxable if the prescription drugs are sold to an organization where the prescription drugs are used in the course of treating patients and are administered under the direction of a doctor, dentist, or veterinarian who is licensed by law to administer such drugs.~~

ARTICLE 23. USE TAX

R15-5-2343. Purchases of Prescription Drugs and Prosthetic Appliances

A. ~~For purposes of this rule, the following definitions apply~~ In this Section:

1. "Drug" means an article that, according to federal or state law, is:
   a. Recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, official National Formulary, or any supplement to these documents; or
   b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or
   c. Not food and is intended to affect the structure or any function of the body of humans or animals; or
   d. Intended for use as a component of any article specified in subsections (a), (b), or (c).

~~1.~~2. "~~Drugs~~ Drug on a prescription" means ~~those substances which can only be dispensed on the direction of a member of the medical, dental, or veterinary profession, who is licensed by law to administer such drugs and which cannot be~~

~~purchased without such authorization. A legend drug is considered a drug on~~ a prescription drug.

3. "Food" means an article used for food or drink for humans or animals, chewing gum, or an article used as a component of such an article.

~~2.~~4. "Hearing aid" means any wearable device designed ~~for aiding~~ as a remedy or ~~compensating~~ to compensate for defective human hearing, including parts, attachments, accessories, and earmolds.

~~3.~~5. ~~A "legend~~ "Legend drug" ~~is~~ means a drug ~~which bears the statement CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION~~ that 21 U.S.C. 353(b)(4)(A) requires to bear the symbol "Rx only" before dispensing.

~~4.~~6. "Nonprescription ~~drugs~~ product" means a ~~substance which~~ drug or other article that can be purchased by the final consumer of the drug or article without a prescription, ~~even though it may be recommended by~~ regardless of whether purchased on the advice or recommendation of a member of the medical, dental, or veterinarian profession. Examples include over-the-counter drugs and those dietary supplements, vitamins, minerals, herbs, and other similar supplements that do not qualify as prescription drugs.

7. "Over-the-counter drug" means a drug that is subject to federal labeling requirements in 21 CFR 201.66.

8. "Prescriber" means a member of the medical, dental, or veterinary profession authorized by federal or state law to prescribe a drug.

9. "Prescription" means an order for a drug issued in any form.

~~5.~~10. "Prescription ~~drugs" are drugs on a prescription~~ drug" means a legend drug or a drug that, according to federal or state law, can be dispensed only:

a. Upon a written prescription of a prescriber for the drug;

b. Upon an oral prescription by the prescriber for the drug that federal or state law requires be reduced promptly to a form of writing by the prescriber and then filed by a pharmacist or the prescriber; or

c. By refilling a written or oral prescription if refilling is authorized by the prescriber for the drug either in the original prescription or by oral order that is first reduced promptly to writing and then filed by a pharmacist or the prescriber.

~~6.~~11. "Prescription eyeglasses" includes frames and other component parts of eyeglasses if purchased for use with the prescription lenses.

~~7.~~12. "Prosthetic appliance" means an artificial device ~~which~~ that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

B. ~~Purchases~~ The storage, use, or consumption in this state of the following ~~items are~~ kinds of tangible personal property is not ~~taxable~~ subject to tax:

1. ~~Drugs on a prescription.~~ Prescription drugs, including those used in the course of treating patients;
2. Medical oxygen, pursuant to ~~statute.~~ A.R.S. § 42-5159(A)(16);
3. Insulin, insulin syringes, and glucose strips, whether or not prescribed~~.~~ ;
4. Prosthetic appliances, prescribed or recommended by a statutorily-authorized individual~~.~~ ;
5. Durable medical equipment, pursuant to ~~statute.~~ A.R.S. § 42-5159(A)(21);
6. Prescription eyeglasses and contact lenses~~.~~ ; and
7. Hearing aids. Batteries and cords ~~do not qualify as exempt~~ are subject to tax.

C. ~~Unless otherwise stated, purchases~~ The purchase of component and repair parts for any tangible personal property ~~included in this rule are~~ that is exempt under either subsection (B) or (F) is not ~~taxable~~ subject to tax.

D. If a written prescription or recommendation is required to purchase ~~the~~ tangible personal property, a taxpayer shall maintain the ~~required~~ prescription or recommendation ~~shall be in writing and maintained~~ as part of the ~~vendor's~~ taxpayer's records. The taxpayer's records for documenting purchases shall provide reasonable detail to allow the Department, upon inspection, to identify property as exempt.

E. Purchases by a final consumer of nonprescription products and those medical supplies or appliances not provided for under subsection (B) are subject to tax.

~~E.~~F. Purchases of nonprescription ~~drugs and~~ products or other medical supplies ~~and~~ or appliances by doctors, dentists, or veterinarians ~~ar taxable.~~ are subject to tax unless

~~1.~~ ~~Purchases~~ the purchase ~~of nonprescription drugs and other medical supplies and appliances by doctors, dentists, and veterinarians are not taxable if the tangible personal property~~ qualifies as a purchase for resale~~,~~ and the doctor, dentist, or veterinarian is a retailer in the business of reselling ~~such~~ the property.

~~2. Purchases of prescription drugs for use in the course of treating patients are not taxable if the prescription drugs are sold to a member of the medical, dental, or veterinarian profession who is licensed by law to administer prescription drugs.~~

~~3. Purchases of prescription drugs are not taxable if the prescription drugs are sold to an organization where the prescription drugs are used in the course of treating patients and are administered under the direction of a member of the medical, dental, or veterinarian profession who is licensed by law to administer such drugs.~~

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

[R05-280]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 5	New Article
R20-1-501	New Section
R20-1-502	New Section
R20-1-503	New Section
R20-1-504	New Section
R20-1-505	New Section
R20-1-506	New Section
R20-1-507	New Section
R20-1-508	New Section
R20-1-509	New Section
R20-1-510	New Section
R20-1-511	New Section
R20-1-512	New Section
R20-1-513	New Section
R20-1-514	New Section

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

Authorizing statute: A.R.S. § 41-1512.01(C)

Implementing statute: A.R.S. § 41-1512.01

3. The effective date of the rules:

July 12, 2005

Immediately upon filing with the Secretary of State under A.R.S. § 41-1032, in order to provide a benefit to the public. There is no penalty associated with a violation of these rules.

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 587, January 28, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1098, March 18, 2005

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

Name:	Sherri Lee, Program Manager
Address:	1700 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-1233
Fax:	(602) 771-1210
E-mail:	sherril@azcommerce.com

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

Arizona is committed to long-term preservation and enhancement of military installations through compatible land uses. A.R.S. § 41-1512.01 (part of Arizona 2004 legislation HB 2140) establishes the military installation fund, to be administered by the Department of Commerce. The legislation and the implementing rules continue toward the goal of compatible land use. The Department, in conjunction with the Military Affairs Commission established by A.R.S. § 41-1512, is charged with adopting rules for receiving and evaluating applications for monies from the fund. The Rulewriting Procedures Subcommittee of the Military Affairs Commission has worked on development of these rules since September of 2004 and held informal public meetings in November of 2004, incorporating input from those meetings into the draft rules before the Notice of Proposed Rulemaking was filed with the Secretary of State this year.

While the legislation does use the language "preservation and enhancement of military facilities" it should be noted that its intent, and that of the rules, is to accomplish this while addressing the needs of the private property owners who have been affected by statutory land use compatibility requirements enacted by the state to ensure the preserva-

tion and enhancement of military installations, which is why 80% of the funding is set aside for acquisition of private property.

The rules prescribe procedures for the application and disbursement of these funds, which are intended to create a mechanism to compensate willing private property owners within the territory of Arizona's military airports, military facilities, and operating areas to ensure compatible land use around Arizona's military installations. The rules also address disbursement of funds for military installation preservation and enhancement projects under A.R.S. § 41-1512.01 (G) (2).

R20-1-501. Definitions

Arizona statutes enacted since 1978 for the purposes of preserving the state's military installations through compatible land use have had an impact on private property owners. The definitions incorporate the statutory definitions for *clear zone, accident potential zone,* and *high noise zone;* ensuring that the same persons impacted are those who will benefit from the fund.

R20-1-502. Notice of Application Deadline and Public Comment Period

In order to ensure equal opportunity to all who may wish to apply to the fund, it is necessary to establish a process that ensures adequate public notice and an adequate period for accepting applications.

R20-1-503. Administrative Review.

This Section allows an applicant a window of opportunity to correct deficiencies in the application, while also ensuring that the Department can efficiently process an application received within a reasonable period of time.

R20-1-504. Application for Acquisition of Private Property

The application requirements have been kept as simple as possible to meet the needs of the applicant, the Department, and the Commission. There are purposely no requirements to submit evidence of legal ownership or have costly environmental assessments done at this stage of the process; those will be addressed during standard property acquisition processing if and when the private property owner is successful and enters into an agreement with the state for acquisition of the property. The application requirements are tied directly to the criteria that will be used to score the application under R20-1-509, discussed later.

R20-1-505. Application for Project Funding

20% of 80% of the Military Installation Fund amount may be awarded to cities, towns and counties for private property acquisition purposes. 20% of the monies in the fund shall go to cities, towns and counties for military installation and preservation and enhancement projects. This Section provides requirements for application for project funding. Any project for military installation preservation and enhancement will be eligible for consideration; there was purposely no attempt to narrow or define the term, as every military installation and every community hosting a military installation is unique and it will be necessary to address proposals on a case-by-case basis. For the same reason, the Department will not score applications for project funding, as it will for applications for private property acquisition.

R20-1-506. Leaving Applications on File

This streamlines the application process for an applicant who is not immediately successful in having private property acquired under these rules; instead of resubmitting the application in full each year, the applicant may leave it on file for up to five years with an annual update.

R20-1-507. Department Solicitation of Comments

It is important for the Commission to have input from affected military installations regarding applications, but as federal agencies they will respond to a direct inquiry rather than being pro-active or influencing local actions. This Section ensures that the Department will strive to collect input from the military installations, as well as local jurisdictions and other entities that may have an interest in the application.

R20-1-508. Department Report to Commission and Notice of Hearing

This Section charges the Department with providing the Commission and applicants all of the information collected regarding an application 14 days before the announced Commission meeting.

R20-1-509. Scoring Applications for Acquisition of Private Property

Due to the limits of the fund – there is not enough money in the fund to solve all of the compatible land use issues in Arizona – it is necessary to prioritize -- specifically, to put the money where the impact of the compatibility standards is most severe.

The objective criteria in this rule allows the Department to score applications according to established priorities, which the Commission may then consider when creating its recommendations for awards from the fund.

Air Installation Compatibility Use Zones (AICUZ) are established by the Department of Defense for each active military airport. Those zones are the foundations for Arizona's statutes and address the critical issues of *safety* and *noise.* These same critical issues are the standards for prioritizing applications according to location. Impacts to private property are greatest where there are safety and noise issues. The original compatibility statutes in 1978 addressed

airports; it has been recognized for 30 years that safety and noise are issues related to airports. These are primarily where the private properties are found which are affected by the statutes. The closer to the military runway, the greater the impact. Thus the first criterion is location of the property, and higher points are awarded the closer the applicant is to the runway.

Property located outside of the zones but which is vital to the installation are next in priority; these are properties critical to the installation's ability to fulfill its missions and obligations. Some examples are Fort Huachuca, the Yuma Proving Grounds, and the Barry M. Goldwater Range.

The third criterion addresses the impact on the property owner's ability or inability to use the property because of statute or local zoning regulations. Government policy dictates to the private property owner how the owner may use their land. Restrictions on use affect value. An example is agricultural land: farmland, once valuable for agricultural uses only, could be far more valuable for residential development, a use now statutorily restricted. The farmer's grandson, who no longer wishes or is able to farm, may be completely supportive of the military installation, but there are limitations to the types of uses that may ultimately be developed on the land.

The fourth criterion directly addresses compatible land use issues: how acquisition could reduce activity that could hinder preservation of the military installation. While encroachment by residential development is frequently the first thought, there are others; examples include light pollution; electromagnetic interference, water availability (this affects the growth potential of the community and the military installation); location of transportation corridors, and air space encroachment.

The fifth criterion addresses the length of time the land has been owned by the applicant. This criterion was specifically chosen to address private property owners near military installations who have experienced changes in their property status over a period of years, as opposed to recent speculative purchasers. There are cases where the property may have been in a family for generations, since before the military installations were built.

Lastly, any measures the applicant has taken to preserve the installation or mitigate impact will be considered.

R20-1-510. Criteria for Projects

As noted previously, any project for military installation preservation and enhancement will be eligible for consideration. There was purposely no attempt to narrow or define the term, as every military installation and every community hosting a military installation is unique and it will be necessary to address proposals on a case-by-case basis. The criteria in this Section are necessary to ensure that legislative intent is met for the best use of the fund.

R20-1-511. Military Affairs Commission Recommendation

While the Department is charged with narrow objective scoring under R20-1-509, the Commission's responsibility is to view each application from a broader perspective, and make its recommendation for expenditures from the fund based upon the collective results. This Section is written accordingly. The Section also allows the Commission to give specific direction to the Department regarding its recommendations, as (for instance) a first choice for award may withdraw an offer for acquisition and the Commission has an alternative choice in that event.

R20-1-512. Department Decision

This Section provides the administrative procedures for decision, notifying applicants of decision, and establishing that payment from the fund is contingent upon satisfactory completion of legal requirements.

R20-1-513. Military Installation Preservation and Enhancement Project Reporting Requirements.

These requirements are for the purpose of monitoring expenditures from the fund for the purpose of projects.

R20-1-514. Appeals

Provides the necessary avenue for appeals; a copy of this rule is sent to unsuccessful applicants under R20-1-512.

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

Davis-Monthan Air Force Base Joint Land Use Study dated February 2004, published by and available for review at the Arizona Department of Commerce by contacting the person listed in Part 4 of this Notice of Final Rulemaking.

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

Not applicable

9. The summary of the economic, small business, and consumer impact:

The impact is expected to be positive. The amount of the fund is $4.825 million annually for a period of 20 years.

Arizona's network of military facilities positions the state at the forefront of the current transformation of the U.S. military and represents an essential component of the state economy. The network comprises an integrated array of bases, testing and training facilities, ranges, and airspace that operate within a physical environment that is uniquely

suited to their individual and combined mission objectives and to the nation's evolving defense posture. This defense strategy is defined in the Department of Defense *Quadrennial Defense Review Report* released in September 2001. The report details a shift in military planning from a threat-based model (who and where) to a capabilities-based model that focuses on how the enemy might fight. The importance of Arizona's military facilities and operations to the transformation of the U.S. military cannot be overstated: the emphasis on joint and combined operations and cutting-edge intelligence -gathering and exploitation lie at the heart of the new defense paradigm and position Arizona to satisfy the needs of the Department of Defense for many years to come. Furthermore, Arizona's military industry generates thousands of jobs, billions of dollars in economic activity, and hundreds of millions of dollars in state and local tax revenue. The stability of employment and tax revenues produced by the Arizona military industry is indispensable to the fiscal health of the state. The long-term retention of Arizona's network of military facilities and the sustainability of their missions are thus vital to the security of the nation and the strength of the state economy.

Arizona's military facilities and operations should be treated as an industry that is a foundation of the state economy. The 2002 Maguire study on the *Economic Impact of Arizona's Principal Military Operations* states that total employment impact, total output, and total annual tax revenues for Arizona's military industry equaled 83,506 jobs, $5.66 billion, and $233.6 million respectively for Tax Year 2000. The stable nature and high-pay-scale value of military jobs make them a fundamental part of the state economy. Recognizing the military industry as a separate economic cluster in Arizona is critical to the efforts to educate the public about its importance to the fiscal health of Arizona.

Actions have to be taken at the local level to support the long-term retention and sustainability of military facilities, and the state needs to provide tools to accomplish this. Innovative approaches that cities, counties, and towns should consider include working with active military airports to establish maximum mission contours and expanded approach/departure corridors that ensure compatible land use and maintain essential quality of life for local residents; utilizing the Graduated Development Concept to graduate densities away from the high-noise contours and Accident Potential Zones (APZs); encouraging the purchase or transfer of development rights by creating incentives for developers to reduce intensity and density in areas that are significant to base missions while increasing density in other areas; purchasing agricultural lands around military facilities that are most affected by safety and noise considerations and leasing them back to farmers for agricultural use; and creating a consistent mechanism for military base outreach pertaining to environmental and growth issues.

Because of the wide range of possible projects with varying local impacts, it is difficult to estimate or generalize about the potential economic impact of this fund.

The sum of $75,000 and 1 FTE is appropriated from the state general fund in fiscal years 2004-2005 and 2005-2006 and each year thereafter to the Department of Commerce. The sum of $100,000 is appropriated from the state general fund in fiscal years 2004-2005 and 2005-2006 and each year thereafter to the Attorney General's office for implementation of this Act.

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

The following comment was received during the comment period: "Rule 20-1-505 (projects) provides instructions for completing applications for funds for local projects to preserve of enhance military bases allows for the submission of applications for purchase of the needed property at the same time. Rule R20-1-505 instructions allow these applications to provide the required information "as applicable". Rule R20-1-504 (property acquisition) does not allow information to be provided "as applicable". Some information required in R20-1-504 are not relevant to local jurisdictions, yet there is no provision to skip these items."

The text in R20-1-505 (C) (10) has been changed to address this concern, as shown by the underline: *If the project includes proposed acquisition of private property, the information and items required under R20-1-504, as applicable;*

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

Note: Abbreviations reference the location of the hearing where the comment was heard, or where the written comment was made, as follows:

SV = Sierra Vista

T = Tucson

P = Phoenix (Avondale)

Y = Yuma

1. Regarding valuation and appraisal:
   - (SV) How will the property be appraised? Don't see any teeth in an agreement on price being set.
   - (T) How is property value determined?
   - (P) How is the value determined for property on the border of a zone?
   - (P) Who establishes the value? If the State, is this a conflict of interest?
   - (Y) Once a property owner enters an application with a property price and it is awarded for a certain amount -- what happens when the numbers don't agree to what the commission approves as to the appraisal?

Response 1. All of this is part of a process. First, the property owner establishes the value for the property when submitting the application under R20-1-504 and specifying "the amount of funds requested." After the application is reviewed, scored, and considered by the Commission, the decision whether to accept the proposed sale at that price or at a reduced price (which the owner may reject) is made under R20-1-512. Payment from the fund is "contingent upon satisfactory completion of legal requirements for acquisition of property…" which includes, as is standard practice, an appraisal of the property. The appraiser will determine what kind of uses are allowed on the land which may have an affect on value, such as local zoning and statutory restrictions (note also that HB 2140, the enabling legislation, establishes a minimum value of one house per acre.) If the property owner does not agree with the appraisal, nothing prevents the owner from terminating the sale. Finally, appraisers are independent contractors and there is not a conflict of interest.

2. (SV) There will be no money left in the fund after appraisals and environmental assessments to buy the property.

Response 2. There is no requirement in the rules for appraisals and environmental assessments to be done prior to a decision under R20-1-512. Appraisals and environmental assessments will come out of the fund, but only as related to individual purchases. They will not affect the actual price paid to the property owner. It is true that the fund is limited, so it will necessarily reduce the amount available to purchase other property, but it will not deplete the fund.

3. Issues related to eminent domain:
   - (SV) Don't you need eminent domain authority?
   - (P) If owners don't agree with the amounts offered for purchase or appraisal, will the State condemn my property?

Response 3. No. The authorizing legislation neither envisioned nor provided for use of the eminent domain mechanism in order to acquire land, nor do the rules support that approach. The legislation specifically identifies this as a voluntary process: willing seller, willing buyer.

4. (SV) Why Veteran's Services and not State Land Department to purchase the land?

Response 4. While neither agency is responsible for "purchase," it is true that Veteran's Services was chosen to manage property purchased from the fund as it was determined to be in the best interest of the state, and the agency is more closely tied to the purpose of the enabling legislation.

5. (T) Since there are only 4 military installations…will funds be divided 4 ways?

Response 5. There are 14 military installations located throughout the state. However, the rules are set up to distribute funding according to the established criteria, not divide it according to a certain number of installations.

6. (P) How long will it take the state to buy the property? (friends have 3 years into the process and still don't have their money)

Response 6. The reference is to a different process not related to these rules. However, R20-1-511 establishes a maximum of 9 months for the purchase process.

7. (P) What is the purchase of development rights versus the outright purchase of the land? Explain it.

Response 7. Purchasing only the development rights would allow the property owner to retain title and use of the property, but with restriction on development of the property.

8. Regarding residential areas in high-risk zones:
   - (P) Why are no specific points given to residential property in the accident potential zones? They should be first priority.
   - (P) Owners living in the crash zones should have first priority
   - (P) Amend the rule to give additional points to any residence in an APZ - someone living there should get added points

Response 8. While the rules do not address "residential property" specifically, the criteria (R20-1-509) are constructed to prioritize property by location, and there are clear statutory requirements about use of land within the locations mentioned in these comments. An applicant would be expected to bring forward any information about active residential use in such areas (see R20-1-504 (15) and (18)), and the Department to note them in its investigation under R20-1-507 and report to the Commission under R20-1-508.

9. (P) The amount left after the 20% is not enough to purchase the lands around Luke Auxiliary 1 because all are in the crash zone. Should be living in the zone for purchase of the property.

Response 9. The fund is limited; it wouldn't be possible to buy everything in one year. The fund is also created as a 20-year fund to address the issue in a long-term manner. The fund limitations necessitated that specific criteria be developed and applications be scored. Residential use is addressed in Response 8.

10. (P) If I die can my children still get fair market value for the land? Who will set the value and how?

Response 10. If your children inherit and they apply, the same process will be followed as for all others. See Response 1 regarding value.

11. Who is setting the priorities? - in Gila Bend the planes fly over with armament…high risk areas should be first in line those in areas of potential crashes should be highest in order for purchase.

Response 11. R20-1-509 does establish priority for locations (crash zones and accident potential zones) but the enabling legislation does not provide a framework for the rules to address live ordinance. Nor, since there is no restriction on where military planes may fly with live ordinance, would it be possible to address that as a factor for the purpose of this fund.

12. Land exchanges are a much fairer option.

Response 12. The enabling legislation does not provide the authority for the rules to address this option.

13. I live in a co-op in APZ 1 – the rules as written don't allow acquisition of a co-op.

Response 13. That is incorrect. All property, including cooperatively held property, is eligible.

14. (SV) When you look at projects if you consider that an area hasn't encroached upon the base as yet but could encroach – it could be cheaper to protect the area that doesn't have development yet and make certain it isn't developed.

Response 14. That may be true, but it is more immediately necessary to address the areas closest to military installations.

15. (Y) The annual 20% ($965,000) of the $4,825,000 is set aside for cities, towns and counties for projects that will help preserve the bases. This money is also available to cities, towns and counties surrounding all the bases in the state. There are too many jurisdictions competing for this money to make awards from this fund meaningful. The remaining $3,860,000 is available to cities, towns and counties to purchase private land necessary for projects.

Response 15. First, the formula is wrongly stated; 20% of the remaining $3,860,000 is available to purchase private land. All cities have the same opportunity to present proposals and compete for funding, but the rules do not state funding is evenly divided, but rather is awarded based upon the value of the project.

16. Y (There is also concern that) this money will only be awarded to cities near Luke.

Response 16. All cities have the same opportunity to present proposals and compete for funding, which will be awarded based upon the value of the project.

17. (Y) Rule 20-1-505 (projects) provides instructions for completing applications for funds for local projects to preserve and enhance military bases allows for the submission of applications for purchase of the needed property at the same time. Rule R20-1-505 instructions allow these applications to provide the required information "as applicable". Rule R20-1-504 (property acquisition) does not allow information to be provided "as applicable". Some information required in R20-1-504 is not relevant to local jurisdictions, yet there is no provision to skip these items.

Response 17. The text in R20-1-505 (C) (10) has been changed to address this concern, as shown by the underline:

If the project includes proposed acquisition of private property, the information and items required under R20-1-504, as applicable;

18. (Y) Under 504 – 20% - on a right of way project: you'd have to have the property owner's permission, correct?

Response 18. As stated previously under Response 3, the rules are written only to address a willing buyer, willing seller scenario. A municipality may have applied eminent domain prior to submitting an application for a project, but the state is not and will not follow that process under these rules.

19. (Y) If a jurisdiction enters an application and doesn't have the correct permissions, what happens to the project application?

Response 19. The process in R20-1-504 is built to ensure that the jurisdiction and property owner are working cooperatively and that the property owner maintains full awareness of jurisdiction actions relating to the MIF application process.

20. Regarding mailing of notices, providing written documents in Spanish, and providing translators:
    - (T) Each person should receive a mailed notice in his or her mailbox in English and Spanish – all paperwork should be in Spanish as well
    - (T) Will notification be done in Spanish to Spanish language media?
    - (T) Who will help Spanish-speaking persons to complete forms?
    - (T) Will property owners within zones be mailed notice of MIF opportunity to acquire property?
    - (T) Each homeowner should receive a notice by mail, in layman's language, both English and Spanish informing them that they are eligible for compensation, a buyout, or money for sound mitigation. The application for compensation should be sent to their homes, and they should be informed about services set up to facilitate the application process.
    - ADOC is not getting out to the state with notices to attend these meetings. Need to notify each homeowner directly. (and by U.S. mail directly to their homes)

Response 20. First, mailing notices to everyone who could potentially be eligible to apply for funds would be extremely cost prohibitive, and not necessary, as R20-1-502 requires extensive public notice for this process. As for providing documents in Spanish, there are also costs to the state associated with that, which is being researched by the state legislature at this time. The Spanish language media does network with English language resources in order to

serve its own customer base. Finally, the Department may provide assistance to customers who do not speak English as necessary and on a case-by-case basis. Compensation for sound mitigation is addressed in a later Response.

21. (T) Can the application be submitted via e-mail?

Response 21. The rules do not provide for this. Allowing electronic submissions was considered during rule development, but it was realized that this would not be feasible due to the requirements for the application and the software necessary to input and read the application and supplemental materials.

22. (P) What happens if BRAC closes the base – does my application stay in the file or automatically drop-out?

Response 22. The rules do not provide for this, and in fact R20-1-506 allows applications to remain on file for up to 5 years.

23. (T) I shouldn't have to provide a map of my property – the state created the maps.

Response 23. The map that R20-1-504 requires is not a state-produced map, but one that the applicant can easily create with pen and paper: "A map of the real property showing its relationship to the specified military installation."

24. (T) Who is going to score – how do we find out our score – what happens when the house is bought? are other costs included – moving, packing - looking for another home

Response 24. R20-1-509 provides the criteria that the Department will use to score applications. R20-1-508 requires that the Department provide each applicant with a copy of the Department's report to the Commission, which includes "All evaluation scores and ranking under R20-1-509." The enabling legislation for the rules does not address use of the fund for the purposes described.

25. Regarding legal assistance to prepare applications:
    - (T) Do we have to hire an attorney –who scores the points and how are they added up?
    - (T) Are attorney fees included? It will take an attorney to complete the application.
    - The regulations are meant for a professional planner or lawyer, not ordinary homeowners – you need to simplify.
    - (T) Rule regulations meant for planners not normal homeowner.
    - This process looks like it is set up to purchase property from those who can afford to have legal representation. They will come first.
    - It seems you have set this process up to compensate those larger landowners who can afford legal representation, and for those who most need it, at the lower end of the economic spectrum, you are putting up road blocks that make it impossible for them to recover compensation.
    - The proposed application seems to require an attorney to meet the proposed requirements. This seems to benefit larger landowners who are able to retain legal counsel and works to the disadvantage of homeowners in the area who are retired, on fixed incomes, and of modest means.

Response 25. The rules were written as clearly as possible so legal assistance should not be necessary. It is of course up to the property owner if they prefer using legal counsel, but no points are scored for doing so. The enabling legislation for the rules does not address use of the fund for the applicant's legal fees for that purpose. Scoring is addressed under Response 24; see R20-1-509.

26. Regarding R20-1-509(5):
    - (T) (Giving points for) length of home ownership is arbitrary – treatment is unequal and unfair.
    - (T) Length of owning the home seems arbitrary - seems like pitting neighbor against neighbor.
    - And please note the unequal treatment of homeowners of residences of the same age, for example a neighbor living in his/her home for 30 years will get award priority over his/her neighbor living there only a year.

Response 26. This criterion was specifically chosen to address private property owners near military installations who have experienced changes in their property status over a period of years and even familial generations, as opposed to recent speculative purchasers.

27. (T) If people have to give up something, do they have to sign away their rights?

Response 27. If an owner sells those rights, use restrictions will be placed on the property.

28. (Y) Yuma jurisdictions may want to purchase land surrounding MCAS or Army Proving Grounds, under Rule R20-1-504 without the property being linked to a project. For example, such applications may be submitted for funds to purchase property for a land swap. Will applications for MIF funds, under these circumstances, be treated the same as any other application?

Response 28. The term "project" is not defined in the authorizing statutes or in the rules, therefore any project would be eligible if it is for "military installation preservation and enhancement." The example provided would be treated the same as any other application for project funding if it meets that criteria.

29. Regarding a list of applicants:
    - (Y) How will the jurisdictions (all) get the names of the applicants – do they send a letter, are they published on the website, how will we make files available (copies) etc.?
    - Are you putting the names of the applications on the website? How else will the city, town or county or mil-

itary installations know when to make some kind of a response.

Response 29. All of the records related to the process under these rules will be public information, and there are statutes and processes in place whereby any person may request public information and have copies made, at cost. As far as the jurisdictions and installations that are directly related to a proposal, R20-1-507 charges the Department with contacting those applicable entities to request written comments regarding the application.

30. (Y) The Yuma community has a long history or working with the Marine Corps Air Station (MCAS). Will the fact that Yuma and other cities has, for decades, taken measures to protect MCAS, negatively influence a decision to award MIF funds to Yuma and reward those areas who have not had a history of adequately protecting their bases?

Response 30. No. Every project will be addressed on its own merits. For property acquisition, R20-1-509 (6) does allow points for "measures the applicant has taken to preserve the military installation."

31. Regarding maps and zone boundaries (see R20-1-501). *Special note: The "Tucson Daily Star" incorrectly reported that the oral proceeding for these rules was to "Get Help for Your Jet Noise." Many comments were a result of that incorrect report.*
    - (T) The maps don't show the correct zones for what's going on here in Tucson.
    - (T) Why can't you show later revisions of the maps- You must show later revisions or its not fair
    - (T) Where are the boundaries-how do people know if they are eligible for funding?
    - (T) These are final maps – BRAC will propose changes – are these map models going to change – will it be updated yearly – proposed moving 116 -F16's from guard to DM. That will increase noise. Who's updating the maps and when?
    - (T) I/we can show the noise contours *(note: reference "high noise zone" boundaries)* are arbitrary and capricious.
    - (T) Do MIF people understand the nature of invasive loud sound?
    - (T) How/who is going to determine the sound levels at any property.
    - (T) How do MIF people insure fairness in sound level point system
    - (T) Will MIF pay for noise level monitoring on the ground to verify that high noise zone boundaries are not arbitrary and capricious.
    - (T) If developers or property owners are going to be compensated for noise attenuation costs who will be responsible to determine that any architectural modifications actually attenuate the noise to the required degree?
    - (T) If none of the money is for sound or noise attenuation then why does Section 509 include a decibel point award?
    - (P) Rules address particular locations in the noise sectors. At Gila Bend there is quite a difference in the sector and what route the planes actually fly.
    - And the noise contours are arbitrary lines meaning that a neighbor across a street won't be eligible for compensation, but his/her neighbor in one of the "zones" will be able to apply.

Response 31. The rules rely on the codified boundaries that are referenced in R20-1-509, and on the maps produced in response to those statutes. The boundaries are written in text within the referenced statutes, which are available in public libraries and online on the internet; the maps are available from the Department and also appear on the Arizona Real Estate Department's web site. The Department does not have the authority to modify the statutory boundaries. If, in the future, the legislature modifies these boundaries within the same citations as used in the rules, the new boundaries will apply, but the Administrative Procedure Act (A.R.S. § 41-1001 *et seq)* requires that the resulting new maps will need to go through the rulemaking process to be incorporated by reference. The sound decibels in R20-1-509 are also tied to the statutory language referenced in the rules, and are restated only to apply points for fair scoring. These are location points as opposed to using any active "noise monitoring." Jurisdictions may apply for project funding for noise attenuation and would be responsible for those projects; there is a reporting requirement in R20-1-513.

32. (SV) (It is) clear that the lawyers for landowners and developers were driving the rules process.

Response 32. This is not true. The Rulewriting Procedures Subcommittee of the Military Affairs Commission, which drafted these rules, was made up of a cross-Section of professions and viewpoints. Further, during the informal rule development process, public meetings were held and the first draft of the rules was revised using public input to address the concerns raised during those informal meetings.

33. Regarding affected military installations:
    - (SV) The rules only apply to Luke and DM not the Fort.
    - (SV) Luke is going to be the only beneficiary of this money

Response 33. This is not true. The authorizing statutes and the rules address all fourteen military installations in Arizona.

34. (SV) Should use government contracting process – this process has lots of holes in it – can see the lawyers changing the result of the committees decision

Response 34. The rulemaking process is established under the Administrative Procedure Act, A.R.S. § 41-1001 *et seq*. An appeals process is provided in R20-1-514. There is nothing in the rules that goes beyond the intent of the authorizing legislation.

35. (SV) Other issues besides encroachment to the noisy airport is important – needs to look at other activities important to the mission

Response 35. The rules do recognize preservation and enhancement issues beyond those mentioned.

36. (SV) How much of a staff bureaucracy did this create? –

Response 36. One new position (FTE) was created within the Arizona Department of Commerce as a result of the new legislation, to administer the fund.

37. Regarding projects proposed by private property owners:
    - (T) Project funding for the homeowners is needed - as well as acquisition funding.
    - (T) I have a property located within the territory in the vicinity of a military airport and perhaps within the "65" 1992 AICUZ noise contour (1808 & 1810 E. Miles St.- Broadway & Kino, Tucson Arizona). After reading this past Saturday's article about possible government help with jet noise levels, I became very interested and wanted to follow-up on this news. I have read the draft rules, and know that perhaps in June 2005 the final rules for application shall be in place. My main question as a private owner is: are the proposed policies and regulations directed at the city, town and county level only.

Response 37. The authorizing statutes, and therefore the rules, address projects only in conjunction with government jurisdictions, so a private homeowner would need to partner with a jurisdiction to apply for project funding.

38. (T) Since 80% of MIF $ will be used to buy property and not provide sound mitigation in affected homes- what priority would be assigned to such a project if it could be done

Response 38. Each project will be reviewed on its own merits under the rules.

39. (P) Because of encroachment issues in Gila Bend, most of the money is going to DM and Luke. Is this true?

Response 39. Each proposal will be addressed on a case-by-case basis under the rules.

40. (Y) There is concern in the community that the MIF monies are, and were, appropriated for the benefit of Luke Air Force Base and little, if any; monies will be available for the other bases in the state.

Response 40. Each proposal will be addressed on a case-by-case basis under the rules.

41. (P) What is the background of the persons looking at the applications? Are they retired military, have real estate/ appraisal experience?

Response 41. The composition of the Military Affairs Commission is determined by statute. Note however that the requirements in the rules are objective, not subjective.

42. Regarding issues outside the scope of this rulemaking, resulting from local issues that the public perceived might be addressed at the oral proceedings and from incorrect reporting on the purpose of the oral proceedings by the *Tucson Daily Star:*
    - (T) Your recent story "Residents to get help on military jet noise" was completely misleading. The state officials at the meeting had never heard of using the fund for individual homeowner sound attenuation as implied in the article. Their discussion focused on the acquisition of land, development rights and city projects (20% of the Fund). They also noted that the fund amounts of $5.0 million per year, statewide "would probably not meet the full need". Using the Star's own cost figure of an average of $15,000 per home for sound attenuation times the number of new homes (some 6,500) added to the high noise contour passed by the City Council last October would total some $9.75 million. This, just for northwest neighborhoods, never mind the southeast or homes already under the previously existing noise contour. In regards to land acquisition, how many properties in Arroyo Chico or Broadmore does the Star believe $5.0 million will purchase? What about in the southeast? Lastly, it was clear that the procedures being discussed were not being designed for use by individual homeowners but rather lawyers and developers. The Star reporter might get a copy of the procedures and pretend to fill it out on her own property to see what the average homeowner will experience. Then for fun, she can ask if it is available in Spanish.
    - I thought this meeting was about sound attenuation not land acquisition –
    - You have done nothing to help us who live through this daily –(noise)
    - Newspaper indicated this meeting would be about sound attenuation
    - I thought it was about noise abatement – on the border – on NW end of the runway. I hope that I'm not forgotten – we need funding for the private people living in that area that need assistance on the noise abatement
    - DEQ should monitor peak noise
    - My ears rang for 3 minutes after a jet flew over while walking my dog
    - I can't live outside because of the noise – came from another state – came here to enjoy the outdoors and I cannot.

- Notify property owners through the tax statements of future meetings.
- 25 persons have walked out since the meeting isn't about sound attenuation– people want assistance living on the other side of the zone. A person living across the street living out the zone cannot get compensation like I can because I live in the zone. Treatment is unequal
- Felt meeting was to be about sound attenuation – When are you going to address that problem.
- This is just an appeasement process – the money doesn't begin to address the problem and it is going to lead to unnecessary competition between neighbors
- All I hear is us talking about the money, or lack of it - just take all of the money and extend the runway to the SE – you'll cure my hearing problem
- No environmental impact study done (when I) attended meeting in November– military official there – wants clarification on noise levels
- Several mailings have gone to county residents - Earl gets two calls a week about this process from people living out of state. There are lots of unanswered questions - he can't answer some of them because he holds a RE license.
- How would state lands be used for best and highest usage
- (T) As you witnessed at last evening's meeting here in Tucson, people are very angry about the complicated rules which seem to be geared toward bureaucrats, attorneys and big developers, not ordinary homeowners who were left out of the JLUS process. There is no help for them for sound mitigation. The City of Tucson officials are raising people's hopes, saying the State will help you. There is a quote from a letter from Mayor Walkup. The *Star* is saying the State MIF will help you. This is all about politics. The people living in the "not compatible with residential use" zone didn't roll over and accept it as expected. Now everyone is running for the tall grass. I would appreciate your comments.
- The time from application completion and processing to the monetary compensation should be speedy, so that homeowners who wish to stay and sound proof their homes can complete the renovation before D-M brings in its new, mega sized, much noisier mission.
- (T) Before passing out any of the Military Installation Fund monies (taxpayers money), I would suggest that the Governors Military Affairs Commission investigate the strong arm tactics of the Tucson leadership with regards to Land Use Codes and the selective enforcement of the requirements set forth in the Davis-Monthan Air Force Base Joint Land Use Study (JLUS) dated February 2004.
- There are property owners that are in full compliance with the JLUS and new Airport Environs Zone (AEZ) ordinance and have been negatively affected for no apparent reason due to the new land use codes. Valuable uses have been taken away from us that would not create a safety hazard or impede on flight operations in any manner. It makes absolutely no sense.
- My question to you and the Governors office is; Why would you want to pass out funds to those individuals that are in full compliance with the JLUS and AEZ ordinance when these funds could be much better utilized by those that are really impacted such as the homeowners whose homes may require upgrading due to the new Noise Contour Districts?
- It is apparent that the Tucson City officials did not plan very well when initiating the new ordinance and the Governor's office owes it to the taxpayers to ensure the best utilization of funds being distributed as well as any future funds requested from the Federal Government by the State of Arizona.
- The whole JLUS process was supposed to be win-win for the Davis-Monthan AFB, the City of Tucson and the Stakeholders. The stakeholders have been the only losers in this process and now we are being asked to apply for taxpayers' money in the form of the various funds being offered.
- Just to let you know that I was employed by the DOD for 38 years and I am one of DMAFB's strongest supporters. However, the poor planning on the part of the City of Tucson's decision makers in their efforts to save the base has taken away everything my wife and I worked for. With the stroke of a pen they have devalued our property significantly and destroyed our retirement plans. I can't believe that this is the same government that I gave 38 years to. I don't believe it is the Governors intent to destroy the residents of the state of Arizona. An investigation is definitely warranted.
- (T)I have a copy of one of the original notices sent last summer to a property owner re: the AEZ proposed land use code amendment by the City of Tucson and the notice only stated that the land use code amendment was to "establish new boundaries for the five zones and districts established for the DMAFB environs." This seems to be hardly sufficient notice of a serious "deprivation of property" justifying compensation by the MIF. I suspect that there would have been many more objections filed by property owners had they known the full extent of the change in this AEZ land use code amendment. Moreover, the heading of the notice "Land Use Code (LUC) Amendment- Airport Environs Zone (AEZ) and Related Minor Changes" was misleading to the property owners in the use of the words "Minor changes".

Response 42. The Department cannot control reporting by any news media and cannot respond to issues that are not only outside the scope of this rulemaking but outside of its jurisdiction. Issues that would relate to this rulemaking have been previously evaluated in this document. See in particular Responses 20, 25, 26, 31, and 37.

43. This is all about buying land and development rights from big developers.

Response 43. This is not true. The rules were broadly developed to allow the Commission and the Department to address many different scenarios.

44. Regarding compensation absent acquisition:
    - (P) While the discussion has been primary concerning people that want to be bought out, how about the ones that doesn't. I not only own property in the APZ II area but I also live on that property and have so for about 40 years. It has been in my family's name for about 50 years, first my Uncle's name then my Grandmother's name and now in my name since 1982. I grew up in that house. I am used to the planes and the noise it is a part of living there. I grew up accepting it. And I still do. I had planned at a later date to build a new house as this house is over 50 years old and now I will not be able to. If the house burns down or gets demolished by nature or age can I rebuild. I don't want to move, so what type of compensation is to be awarded for the devaluation of my home and the restrictions imposed upon me.
    - The rules address only the acquisition of property. They do not address noise mitigation measures for homeowners. I don't want to move, I've lived here over 20 years.

Response 44. The restrictions and permissions in this case are imposed by the local jurisdiction. The enabling statutes for these rules are not designed to provide compensation absent acquisition.

45. (T) I briefly spoke with you by phone this morning, April 11, 2005. Those of us who have been negatively impacted by the noise contour ordinance established in October, 2004 on studying the MIF Draft Rules have become alarmed at the obvious omission of sound attenuation compensation. Instead, it looks like the Department of Commerce committee responsible for drafting these rules are encouraging people to sound proof their own homes (# 6. pg 14) by giving them points for doing so. Most people under the D-M noise contours cannot afford $30,000 out of pocket to sound proof their homes. And even if they could, they might not appreciate having to wait 10+ years for reimbursement.

Response 45. See Response No. 37**.** The writer has misinterpreted R20-1-509 (6). Allowing points for measures taken to preserve the military installation or mitigate impacts of the installation is not to encourage but to recognize when corrective measures have been taken.

46. (T) This process is a practice in deception and not a good faith effort on the part of the State to compensate those homeowners who have been most seriously impacted by legislation that has put them in a daily unsafe and unhealthy environment and one that will seriously impact property value.

Response 46. There is no deception in this process. The enabling legislation for these rules set the percentages and nature of compensation.

47. Homeowners who have had these negative circumstances imposed on them should be compensated by those who imposed them and the financial burden should be shared equally by all who stand to benefit.

Response 47. The enabling legislation for these rules set the percentages and nature of compensation.

48. The process should be straightforward.

Response 48. The rules have been written with the intent of creating a straightforward process.

49. Furthermore, if you do intend to purchase property and/or to provide money for sound attenuation to the homeowners in the Julia Keen, Arroyo Chico and Broadmoor neighborhoods can you please direct us to the Sections in the 'draft rules' that deal with these issues.

Response 49. Anyone can apply for acquisition of private property under R20-1-504. See also Response 37.

50. Regarding the purpose of the fund:
    - The language is "Military Installation Preservation and Enhancement Project." I find this rather "double speak" at best, offensive at worst. Where is the language that speaks of preserving our neighborhoods and enhancing their quality? Where is the language that speaks to being good neighbors with the base and them with us?
    - The State should give consideration to the neighborhoods being adversely affected. The state should preserve and enhance the neighborhoods, not just the military facilities.

Response 50. While the legislation does use the language "preservation and enhancement of military facilities" it should be noted that its intent, and that of the rules, is to accomplish this while addressing the needs of the property owners who have been affected by statutory land use compatibility requirements enacted by the state to ensure the preservation and enhancement of military installations. That is why 80% of the funding is set aside for acquisition of private property.

51. In a perfect world we wouldn't need the base, unfortunately that is not the case. I seek nothing more than fairness and evenhandedness. Your proposed rules do neither and pose the risk of degrading the quality of life in my part of Tucson. I oppose these rules as written and recommend they be rewritten.

Response 51. The rules were developed to be as fair as possible within the framework of the statutes and the limitations on funding. We are unable to determine how the rules might be perceived to degrade the quality of life in any location.

52. I am requesting a response from you as the Program Manager, and/or a deputy attorney general, as to the specific due process steps that were taken by the State of Arizona, prior to the "taking" of the property of the landowners here in Tucson and Pima County, adjacent to DMAFT, and/or within these "clear zones, accident potential zones and high noise zones", as outlined in R20-1-509.

Response 52. R20-1-509 does not establish the zones referenced in this comment. The Department cannot respond to issues outside of its jurisdiction.

53. I question the inadequate notice by the state Dept. of Commerce and the City of Tucson, because of possible violations under the 5th and 14th Amendments of the U.S. Constitution, which states that no State shall Deprive any person of life, liberty or PROPERTY (emphasis added) without due process of law.

Response 53. All public notice requirements for rulemaking under the Administrative Procedure Act have been followed. Remaining comments are not relevant. This rulemaking does not result in the deprivations described in this comment.

54. Since this MIF program is offering "compensation," there must have been a "taking or deprivation" of this property to trigger this monetary fund. Article 2 Section 17 of the Constitution of the State of Arizona states that "no private property shall be taken or damaged for public or private use without just compensation having first been given"… also raises the question as to when was this property "taken" or "damaged" to justify compensation? Moreover, if this MIF is indeed about "just compensation" why aren't notices about the application deadlines for awards (outlined in R20-1-502) being sent to each affected landowner by the Department of Commerce or the City of Tucson Neighborhood Resources?

Response 54. The term "compensation" in the enabling statutes for these rules is used only in relation to acquisition of property. See also Responses 3 and 20.

55. This fund is also considerably under funded – how can 80% of $4.8 million be enough for affected property owners in the entire state of Arizona affected by several air force bases? 6,500 homes in Tucson alone were added to the airport environs zone expansion last October, 2004. I question whether there isn't also a violation of the 5th amendment to the US Constitution prohibiting the "taking of private property for public use without just compensation".

Response 55. We agree that more funding would be needed to accomplish the full mission of the legislation. This is a 20-year fund. See also Response 3.

56. Repeating what I said on 4/18 at the first hearing on the MIF in Tucson; most of the audience are neighbors, some in National Historic Register districts, who want to stay in their homes and do not want to sell or "offer for acquisition" their property for compensation. One of your flyers mentioned that this MIF is "only one of five possible tools in the recommendations to address the compensation issue – what are the other 4?

Response 56. The authorizing statutes for these rules do not provide for compensation without acquisition. Refer to the mechanisms identified by the Governor's Military Facilities Task Force in its December 2003 report, which can be found on the Governor's web site.

57. Want a link on the web site for public comments.

Response 57. R20-1-502 requires the Department to announce application deadlines on its web site and to allow written comments. E-mail addresses are provided.

58. (P) What is the process for getting this info out to future developers, land buyers etc. (E.D. for Town of Gila Bend)

Response 58. The rules provide the information necessary to obtain maps, boundaries, and deadline information.

59. (P) Do you have an estimate of the number of people involved in the process around the state?

Response 59. Public meetings were held in 2004 during the rule development process; 71 signed in at that time, but approximately double that number were actually in attendance. During the oral proceedings held as published in the *Arizona Administrative Register* in April 2005, 73 signed in, but approximately triple that number attended the sessions; there were over 100 people in attendance during the Tucson meeting alone.

60. (P) Would like to see that comments received by ADOC once a year and the rules reviewed and amended.

Response 60. All written comments will be retained on file and reviewed every five years under A.R.S. § 41-1056. Comments will be reviewed sooner if it is determined that the rules in this new Article require amendment before then. The comments received during this process, with these corresponding Responses, will not only be published in the *Arizona Administrative Register,* but will be published on the Department's web site.

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

As allowed by A.R.S. § 41-1032, it is intended that these rules become effective immediately upon filing with the Secretary of State under A.R.S. § 41-1031, in order to provide a benefit to the public. There is no penalty associated with a violation of these rules.

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

R20-1-501 (4) incorporates the following maps by reference:

a. Airport Vicinity Map for Luke Air Force Base dated June 20, 2002;
b. Luke Air Force Base Auxiliary Airfield 1, dated March 1 5, 2004;
c. Marine Corps Air Station Yuma Land Use Boundaries, dated July 19, 2001;
d. Yuma Air Station Auxiliary Airfield 2, dated July 20, 2004;
e. Gila Bend Auxiliary Airfield, dated October 8, 2004;
f. Figure 5-1 (Notional Noise Contours) and Figure 5-2 (Compatible Land Use Plan Zones) from the *Davis-Monthan Air Force Base Joint Land Use Study* dated February 2004; and
g. For the Fort Huachuca Military Reservation, Map 7 from the *City of Sierra Vista General Development Plan,* dated October 24, 2002.

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

ARTICLE 5. MILITARY INSTALLATION FUND

Section

ARTICLE 5. MILITARY INSTALLATION FUND

R20-1-501. ~~Expired~~ Definitions

In addition to the definitions provided in A.R.S. § 41-1501, 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 incorporated by reference in subsection (4).
2. "Clear zone" has the meaning in A.R.S. § 28-8461 (8).
3. "Development right" means the right to undertake and complete the development of real property for a particular use.
4. "High noise zone" means an area designated as "a high noise zone" on the military facility maps listed below. The maps are available from the Department, incorporated by reference, and do not include any later revisions:
   a. Airport Vicinity Map for Luke Air Force Base dated June 20, 2002;
   b. Luke Air Force Base Auxiliary Airfield 1, dated March 1, 2004;
   c. Marine Corps Air Station Yuma Land Use Boundaries, dated July 19, 2001;
   d. Yuma Air Station Auxiliary Airfield 2, dated July 20, 2004;
   e. Gila Bend Auxiliary Airfield, dated October 8, 2004;

f. Figure 5-1 (Notional Noise Contours) and Figure 5-2 (Compatible Land Use Plan Zones) from the Davis-Monthan Air Force Base Joint Land Use Study dated February 2004; and
g. Fort Huachuca Military Reservation, Map 7 from the City of Sierra Vista General Development Plan, dated October 24, 2002.

5. "Military Affairs Commission" means the Arizona Military Affairs Commission established under A.R.S. § 41-1512.
6. "Military installation" has the meaning in A.R.S. § 41-1512(E).
7. "Property" means all real property including development rights.

R20-1-502. ~~Expired~~ Notice of Application Deadline and Public Comment Period

A. The Department shall publish the application deadline for awards from the military installation fund established under A.R.S. § 41-1512.01 in a newspaper at least 60 days before the application deadline, as well as posting it on the Department's web site, announcing it to the news media, and making it available from the Department during normal working hours.

B. The Department's notice shall state that copies of submitted applications will be available for public review at the Department and that members of the public may submit written comments to the Department within the time specified in the notice.

R20-1-503. ~~Expired~~ Administrative Review

The Department shall perform a review of an application within 45 days from the application deadline, and shall return any application not meeting the requirements of this Article with a written notice of deficiencies. The applicant may resubmit the application with the deficiencies corrected within 15 days from the date on the written notice of deficiencies. The Department shall reject any application not resubmitted with deficiencies corrected within the 15 days. The Department shall complete the administrative review in 60 days from the date of the application deadline, and shall not accept any further revisions or additions to any application after receipt of original application unless specifically requested by the Department.

R20-1-504. ~~Expired~~ Application for Acquisition of Private Property

A. The applicant shall submit an application and four legible copies of the completed application to the Department.

B. An applicant shall comply with the requirements of this Section according to the deadline published under R20-1-502. 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. If applicable, the name of the property owner's representative or agent, and the mailing address, telephone number and, if available, fax number and e-mail address;
3. If the property owner is represented by another person, written consent for representation signed by the property owner;
4. A completed "Application Checklist" form available from the Department, listing all items included as part of the application;
5. The legal description of the location of the property;
6. A statement of the property the owner is offering for acquisition;
7. A map of the real property showing its relationship to the specified military installation;
8. The date the property was acquired by the current property owner;
9. A statement of legal ownership by the property owner;
10. A list of all known recorded or unrecorded mortgages, encumbrances, liens, and easements on the property;
11. A statement disclosing any known environmental conditions on the property;
12. A written description of any improvements and the date the improvements were made upon the property;
13. A narrative explaining the applicant's eligibility to apply for an award from the military installation fund;
14. The amount of funds requested, and the amount and source of any supplemental funding available for the acquisition;
15. A written explanation describing 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 and local military planning and zoning mandates;
16. A written explanation of measures taken by the applicant to mitigate the impact of the military installation on the property and the property owner;
17. Any documents from the military installation, city, town, county, or other entity or individual that support or oppose the proposed acquisition;
18. A written explanation or other documentation providing information the applicant believes will assist the Department and the Military Affairs Commission 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.

R20-1-505. ~~Expired~~ Application for Project Funding

A. A city, town, or county seeking funding for a military installation preservation and enhancement project (project) shall submit an original application and four legible copies of the completed application to the Department as prescribed in this Section and according to the deadline published under R20-1-502. The applicant under this Section is the representative

authorized by the requesting jurisdiction.

B. The applicant shall provide the following information, as applicable, on or with the application form:
1. The name of the requesting jurisdiction;
2. The applicant's name, mailing address, telephone number and, if available, fax number and e-mail address;
3. The date the project request was approved by the requesting jurisdiction;
4. A completed "Application Checklist" form available from the Department, listing all items included as part of the application;
5. The names of the persons or organizations the jurisdiction will work with on the project;
6. The name of the proposed project with a brief summary of the project proposal;
7. A written narrative explaining the project in detail, including how it will preserve or enhance the military installation and any proposed starting and ending dates;
8. The estimated budget for the project, with a description of any other funding source that may be used;
9. The amount of funding requested from the military installation fund;
10. If the project includes proposed acquisition of private property, the information and items required under R20-1-504, as applicable;
11. A statement of any past action taken by the jurisdiction to preserve or enhance the military installation;
12. Any documents from the military installation, city, town, county, or other entity or individual that support or oppose the proposed project;
13. A written explanation or other documentation the applicant believes will assist the Department and the Military Affairs Commission regarding the project request; and
14. 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.

R20-1-506. ~~Expired~~ Leaving an Application on File

An applicant may leave a complete application with no deficiencies on file with the Department for a maximum of five years. The Department shall consider the application each year along with all new applications received if the applicant submits a written request to the Department during the annual application period under R20-1-502. The Department shall rank each application each year regardless of years under consideration. The applicant shall include the following information in the written request:
1. The name of the property owner, or the name of the requesting jurisdiction, 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.

R20-1-507. ~~Expired~~ Department Solicitation of Comments

Before providing the Military Affairs Commission with its recommendation regarding an application, the Department shall contact the applicable military installation, city, town, county, and any other entity that may have an interest in the application. The Department shall request written comments regarding the application.

R20-1-508. Department Report to Commission and Notice of Hearing

A. The Department shall compile and forward to the Military Affairs Commission a report that includes the following:
1. All applications accepted as complete under R20-1-503;
2. Any written comments received under R20-1-502 (B) and R20-1-507;
3. All evaluation scores and ranking under R20-1-509;
4. Available funding calculated using the funding formula under A.R.S. § 41-1512.01 (G); and
5. The recommended funding distribution.

B. At least 14 days before the Commission meeting at which applications will be considered, the Department shall provide each applicant with a written notice of the date, time, and location of the meeting, and a copy of the Department's report.

R20-1-509. Scoring 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: 300 points;
   b. Accident potential zone 1 defined in A.R.S. § 28-8461 (1): 250-290 points;
   c. Accident potential zone 2 defined in A.R.S. § 28-8461 (2), including compatible use zone II as shown in the map incorporated by reference in R20-1-501 (4) (f): 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 clear zones, accident potential zones, and high noise zones, but which, based on written input, 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 and state statute enacted for the preservation of the military installation: 0 - 95 points;
4. Based on written input, the 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 length of time that the property has been owned by the applicant, with the highest score going to the longest period of ownership: 0 - 80 points; and
6. Measures the applicant has taken to preserve the military installation or to mitigate any impacts of the military installation: 0 - 60 points.

R20-1-510. Criteria for Projects

The Military Affairs Commission shall consider the following criteria in evaluating military installation preservation and enhancement projects under R20-1-505:

1. How the project will preserve or enhance the military installation;
2. The availability of additional funding for the project from other sources;
3. Whether acquisition of property for the project could prevent or reduce encroachment or other activity that could hinder preservation of the military installation, or the ability to accomplish its mission;
4. Past actions taken by the jurisdiction to preserve the military installation;
5. Whether or how the project will improve the condition of the military installation, land, facilities, or associated airspace through multi-use opportunities; and
6. Whether and how the project will mitigate impacts of the military installation on the surrounding community.

R20-1-511. Military Affairs Commission Recommendations

A. The Military Affairs Commission shall review the Department's report under R20-1-508. The Commission may allow oral testimony at its open meeting for review of applications.

B. The Military Affairs Commission shall determine its recommendation to the Department based upon:

1. The likelihood of the proposed project or the acquisition of private property to preserve and enhance the mission of a military installation, and
2. The economic efficiency of applying the fund for the greatest protection or enhancement of a military installation.

C. The Commission shall transmit its written recommendation under A.R.S. 41-1512.01(D) to the Department, including any direction and alternatives to the Department, within seven days of its decision.

R20-1-512. Department Decision

The Department shall review the recommendations of the Military Affairs Commission and decide whether to accept, accept with a reduced amount, or deny an application submitted under R20-1-504 or R20-1-505, and shall provide each applicant with a copy of its written decision within 21 days of the Military Affairs Commission's recommendation. The Department shall include in its written decision the reasons for denial or reduction and include a copy of R20-1-514. Payment from the fund for acquisition of private property is contingent upon satisfactory completion of legal requirements for acquisition of property within nine months of the Department's written decision.

R20-1-513. Military Installation Preservation and Enhancement Project Reporting Requirements

A. For the purpose of this Section, a "successful applicant" is any jurisdiction awarded funds for a military installation preservation and enhancement project from the military installation fund under this Article.

B. Each successful applicant shall provide the Department with a written report within six months of the Department's decision under R20-1-512 on the progress of the project for which it received funds, and shall include in the report an accounting of military installation fund monies received and used. The successful applicant shall make additional written reports to the Department every six months until completion of the project, or until all requirements for the acquisition are completed.

R20-1-514. Appeals

A. An applicant whose application for military installation funding is denied or the amount reduced by the Department may file an appeal with the Department by submitting a letter to the Director providing reasons for protesting the decision within 30 days of the date of the final written decision under R20-1-512.

B. The Director shall review the substance of the protest and respond in writing, by mail to the applicant, within 30 days of receipt of the protest.

C. Appeals from the Department decision are prescribed in A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Hearing Procedures.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R05-278]

PREAMBLE

1. Sections Affected **Rulemaking Action**
R20-5-121 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 23-107(A)(1), 23-921(B)

Implementing statute: A.R.S. § 23-1067

3. The effective date of the rules:
July 12, 2005

The rule is to be effective immediately on filing in the office of the Secretary of State pursuant to A.R.S. § 41-1032 on the basis that it provides a benefit to the public and there is no penalty associated with a violation of the rule.

4. A list of all previous notices appearing in the *Register* addressing the final rule:
Notice of Rulemaking Docket Opening: 11 A.A.R. 1290, April 1, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1244, April 1, 2005

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

Name:	Andrew F. Wade, Esq. Legal Division Industrial Commission of Arizona
Address:	800 W. Washington St., Suite 303 Phoenix, AZ 85007
Telephone:	(602) 542-5781
Fax:	(602) 542-6783
E-mail:	awade@ica.state.az.us

6. An explanation of the rule, including the agency's reason for initiating the rule:
Under A.A.C. 20-5-121, the Industrial Commission is responsible for calculating the present value of workers' compensation awards to effectuate lump sum payouts to applicants. The current rule uses the United States Abridged Life Tables, 2000, to determine the life expectancy of an applicant, which is a necessary part of the lump sum calculation. The Commission initiated the current rulemaking to update the Life Table used in the present value analysis to the 2002 edition to bring the rule into conformity with population trends in the United States.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

9. The summary of the economic, small business, and consumer impact:
The proposed amendment concerns only the updating of the life expectancy table to be used in calculating lump sum awards of workers' compensation benefits. Individuals affected by the updated life expectancy table will benefit from the updated rule to the extent that the proposed amendment is intended to make the rule more accurately reflect the

population trends in the United States between 2000 and 2002. The Industrial Commission does not anticipate or foresee any measurable negative economic impact on small businesses or consumers as a result of the amendment to this rule. Other than costs associated with printing the rules in a booklet for distribution to the public, the Industrial Commission does not anticipate that the proposed rule change will have any measurable negative economic impact on the Agency.

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

Minor format changes were made at the request of the Governor's Regulatory Review Council staff.

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

The Industrial Commission did not receive any comments.

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

None

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

United States Abridged Life Tables, 2002, National Vital Statistics Reports, Vol. 53, Number 6, Table 1, incorporated by reference in R20-5-121(B).

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section
R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

A. The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.

B. The Commission shall calculate the present value of an award, whether payable for a period of months or based upon the life of the employee, using the United States Abridged Life Tables, ~~2000~~ 2002, National Vital Statistics Reports, Vol. ~~51~~ 53, Number ~~3~~ 6, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendment or edition of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on a three-month Treasury Bill rate average at five points in time: for close of business on May 15, for close of business the day before May 15, for close of business on May 15 of the prior year, a 12 month high, and a 12 month low, as shown in the Wall Street Journal for May 15 of the current year and the prior year, and the daily web site quotes of the Treasury Bill secondary market rates. The rate once calculated becomes effective for one year starting the first day of July, of the current year. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R05-277]

PREAMBLE

1. Sections Affected **Rulemaking Action**
R20-6-1702 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. §§ 20-143 and 20-156(A)

Implementing statutes: A.R.S. §§ 20-143 and 20-156(A)

3. The effective date of the rules:
September 10, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rule:
Notice of Rulemaking Docket Opening: 11 A.A.R. 1200, March 25, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1174, March 25, 2005

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

Name:	Margaret McClelland
Address:	Arizona Department of Insurance 2910 North 44th St., Second Floor Phoenix, AZ 85018
Telephone:	(602) 912-8456
Fax:	(602) 912-8452

6. An explanation of the rule, including the agency's reason for initiating the rule:
This rulemaking amends R20-6-1702 to be consistent with A.R.S. § 20-156(A), the statutory authority for that Section. The Arizona Legislature revised A.R.S. § 20-156(A) in 2001 to change the requirement for frequency of examination of insurers from "not less frequently than once every three years" to "at least once every five years." The proposed amended R20-6-1702 will be consistent with that statutory change. Additionally, the director proposes stylistic changes to R20-6-1702 to make the rule more clear, concise, and understandable.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable

9. The summary of the economic, small business, and consumer impact:
The Director is not aware of consumers that will be directly impacted by this rulemaking.

The Director is not aware of small businesses that will be directly impacted by this rule, therefore, the Department does not believe it is necessary to reduce the impact on small businesses.

There will be a minimal economic impact on the Department for costs associated with the rulemaking process.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
The Department made substantive changes in response to comments from the staff of the Governor's Regulatory Review Council. Subsection (B) was revised as follows:

B. Instead of the examination under subsection (A), the ~~The~~ Director may accept ~~an~~ the most recent examination report prepared by the National Association of Insurance Commissioners insurance regulatory authority of another state on any foreign or alien insurer if:

Additionally, "or" was deleted at the end or (B)(1) and in (B)(3)(b) "that states" was changed to "stating."

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

Written comment: The Department received a written request that the Department modify the rule to require that market conduct exams be conducted on an "as needed" basis, rather than according to a mandatory schedule.

Agency response: This rule does not apply to market conduct examinations. Under R20-6-1701(B), "Examination" means "any examination relating to the financial condition of a company." This rule applies only to financial examinations. No change.

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

Not applicable

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

Not applicable

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 17. EXAMINATIONS

Section
R20-6-1702. Authority, Scope, and Scheduling of Examinations

ARTICLE 17. EXAMINATIONS

R20-6-1702. Authority, Scope, and Scheduling of Examinations

~~**A.** The Director or any of the Director's examiners shall, at a minimum, conduct an examination of every domestic insurer not less than once every three years, except that life and disability reinsurers defined in A.R.S. § 20-1082, service companies defined in A.R.S. § 20-1095, and mechanical reimbursement reinsurers defined in A.R.S. § 20-1096 shall be examined not less than once every five years. The Director or any of the Director's examiners shall examine every other insurer licensed in this state not less frequently than once every five years.~~

A. The Director shall examine an insurer under A.R.S. § 20-156(A) at least once every five years.

~~**B.** After January 1, 1994, the Director shall not accept, in lieu of an examination under this Article, an examination report on any foreign or alien insurer prepared by the insurance regulatory authority of another state unless:~~

~~1. Such insurance regulatory authority was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or~~

~~2. The examination was performed under the supervision of an accredited insurance regulatory authority or with the participation of one or more examiners who are employed or contracted by such an accredited insurance regulatory authority and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance regulatory authority.~~

B. Instead of the examination under subsection (A), the Director may accept the most recent examination report prepared by the National Association of Insurance Commissioners insurance regulatory authority of another state on any foreign or alien insurer if:

1. The insurance regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program at the time of the examination,
2. A National Association of Insurance Commissioners accredited insurance regulatory authority supervised the examination, or
3. At least one examiner employed or contracted by a National Association of Insurance Commissioners accredited insurance regulatory authority:
   a. Participated in and reviewed the examination work papers and report, and
   b. Signed an affidavit stating that the examination was performed in a manner consistent with the standards and procedures required by the National Association of Insurance Commissioners accredited insurance regulatory authority.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R05-294]

PREAMBLE

1. Sections Affected **Rulemaking Action**

R20-6-2002 Amend

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

Authorizing statute: A.R.S. § 20-167(H)

Implementing statutes: A.R.S. §§ 20-167(H), 20-1098, 20-1098.01(G), 20-1098.05, 20-1098.06, and 20-1098.07

3. The effective date of the rules:

September 13, 2005

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 1063, March 11, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1052, March 11, 2005

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

Name: Margaret McClelland

Address: Arizona Department of Insurance
2910 North 44th St., Second Floor
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

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

Laws 2001, Chapter 327 established a captive insurance program in Arizona. Effective July 1, 2002, A.R.S. § 20-1098.01(J) required the Director of the Department of Insurance to establish fees for the issuance and renewal of a captive insurer license under A.R.S. 20-167(H). In 2002, the Department promulgated rules to establish such fees for captive insurers in R20-6-2002. In 2003, the Arizona legislature, in HB 2152, amended the captive insurance law to allow the creation of protected cell captive insurers. The existing R20-6-2002 does not specify fees for a protected cell captive insurer, which is a captive insurer defined under A.R.S. § 20-1098(5). The existing rule also does not specify fees for an amendment to the certificate of authority for a captive insurer.

Currently, all other states that have captive statutes have the ability to collect revenues via premium taxes from the protected cell captive insurer for each protected cell. Arizona is a fee-based state and under the current rule, the Department can collect only $1000 for the initial license and $5500 for the annual renewal license from the protected cell captive insurer, regardless of the number of protected cells.

The work that the Department performs in reviewing, approving, and processing a protected cell applicant for certificate of authority is similar to that for reviewing, approving and processing a regular captive insurer application for certificate of authority. Also, the work that the Department performs in reviewing, approving, and processing an application for issuance of an amended certificate of authority is similar to the work the Department performs in reviewing, approving and processing an application for an initial certificate of authority for a captive insurer. ADOI is incurring additional costs when reviewing, approving and processing a protected cell application for certificate of authority and for issuance of an amended certificate of authority, but is not being compensated for the work for either. This rulemaking will provide for the Department to be compensated for the work.

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

None

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

Not applicable

9. The summary of the economic, small business, and consumer impact:

A protected cell captive insurer is defined in A.R.S. § 20-1098 (14) and it is the captive insurer that is licensed by the Department. A protected cell is defined in A.R.S. § 20-1098(13). The protected cell is a separate account that is established and maintained by the protected cell captive insurer and it is not licensed by the Department. Instead, the protected cell is a participant insured by the protected cell captive insurer through a contract. When the protected cell captive insurer determines that it would like to add a protected cell or otherwise amend or renew its license, the protected cell captive insurer will file the documents required under A.R.S § 20-1098.01 with the Department. The fees under this rule will be paid to the Department by the protected cell captive insurer that is licensed by the Department, not by the individual protected cell.

There will be an economic impact to protected cell captive insurers and captive insurers as a result of this rulemaking due to the fees imposed. Because protected cell captive insurers are typically established only by large enterprises that would otherwise be capable of self-insuring their risks, and are not subject to any premium taxes as are regular insurers, the economic impact is estimated to be minimal to moderate.

The Department does not expect this rule to directly impact small business, other public agencies, political subdivisions. The rules will impose no economic burden on private persons or consumers.

There will be a minimal economic impact on the Department for costs associated with the rulemaking process.

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

In response to comments from the staff of the Governor's Regulatory Review Council (G.R.R.C.) requesting clarification that the protected cell captive insurer pays all fees for each cell the protected captive insurer wishes to establish, the Department revised the second sentence of R20-6-2002(A). Additional changes were made in response to G.R.R.C. staff comments as follows:

A. A corporation applying for a license to do business as a captive insurer, ~~as defined in~~ under A.R.S. § ~~20-1098(4)~~ 20-1098(5), shall pay a nonrefundable fee of $1,000.00 to the Department for issuance of the license. A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098(14), also shall pay to the Department a nonrefundable fee of $1,000 for ~~issuance of each license for each protected cell~~ each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(b)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.

B. A captive insurer shall pay a nonrefundable annual renewal fee of $5,500.00 to the Department at the time of filing its annual report under A.R.S. § ~~20-1098.01(G)~~ 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of $2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § ~~20-1098.05(B)(6)~~ 20-1098.07.

C. A captive insurer shall pay a nonrefundable fee of $200.00 to the Department at the time of filing for issuance of an amended certificate of authority.

~~**C.**~~**D.** In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination ~~conducted by~~ the Director conducts, ~~in accordance with~~ under A.R.S. § ~~20-1098.06~~ 20-1098.08.

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

No comments were received on the rule.

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

Not applicable

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

Not applicable

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 20. CAPTIVE INSURERS

Section
R20-6-2002. Fees; Examination Costs

ARTICLE 20. CAPTIVE INSURERS

R20-6-2002. Fees; Examination Costs

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B. A captive insurer shall pay a nonrefundable annual renewal fee of $5,500.00 to the Department at the time of filing its annual report under A.R.S. § ~~20-1098.01(G)~~ 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of $2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.

C. A captive insurer shall pay a nonrefundable fee of $200.00 to the Department at the time of filing for issuance of an amended certificate of authority.

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