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 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

[R07-397]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 14	New Article
R9-25-1401	New Section
R9-25-1402	New Section
Table 1	New Table
R9-25-1403	New Section
R9-25-1404	New Section
R9-25-1405	New Section
R9-25-1406	New Section

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

Authorizing statutes: A.R.S. §§ 36-2202(A)(4) and 36-2209(A)(2)

Implementing statutes: A.R.S. §§ 36-2208(A), 36-2220(A), 36-2221, 36-2222(E)(3), 36-2225(A)(5) and (6), 36-2403(A), and 36-2404

3. The effective date of the rules:

January 12, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3756, October 6, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 2562, July 20, 2007

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

Name: Vicki Conditt, Trauma System Section Chief

Address: Department of Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Ave., Suite 540
Phoenix, AZ 85007

Telephone: (602) 364-3155

Fax: (602) 364-3568

E-mail: conditv@azdhs.gov

or

Name: Kathleen Phillips
Rules Administrator and Administrative Counsel

Address: Department of Health Services
1740 W. Adams St., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

6. An explanation of the rulemaking, including the agency's reasons for initiating the rulemaking:

A.R.S. § 36-2208(A) makes the Arizona Department of Health Services (ADHS) responsible for coordinating, establishing, and administering a statewide system of emergency medical services (EMS) and trauma care and a trauma registry.

A.R.S. § 36-2221 requires trauma centers, as defined in A.R.S. § 36-2201, to submit to ADHS a uniform data set prescribed by ADHS for each trauma patient. A.R.S. § 36-2221 further provides that advanced life support (ALS) base hospitals that are not trauma centers may submit this data to ADHS. The statute also requires ADHS to identify which patients are to be included as trauma patients and to provide quarterly trauma system data reports to each hospital submitting data.

A.R.S. § 36-2225(A) requires ADHS to develop and administer a statewide EMS and trauma system to implement the Arizona EMS and trauma system plan and to adopt rules to establish standards for, among other things, designation of trauma centers, trauma system evaluation and quality review through the collection and analysis of data, and protection of confidential patient care and trauma registry information. A.R.S. § 36-2225(A)(4)(b) further provides that ADHS may require, in the trauma center designation rules, that trauma centers submit data to the trauma registry. A.R.S. § 36-2225(B)(2) defines "trauma center" to mean a health care institution that is designated by ADHS under its rules for trauma center designation.

Effective October 2005, ADHS adopted rules for trauma center designation. Since that time, ADHS has designated seven Level I trauma centers, all of which are required by rule to submit data to the ADHS trauma registry. The ADHS trauma registry currently receives trauma patient data from those seven Level I trauma centers and from three hospitals that are not designated trauma centers.

Although ADHS has administered the ADHS trauma registry for more than 10 years, ADHS has never before included trauma registry requirements in rule. Instead, ADHS has been prescribing the requirements for trauma registry data submission through policy. With this rulemaking, ADHS creates standards for submission of trauma patient data to the ADHS trauma registry. The rules include trauma patient inclusion criteria, minimum data element requirements, and deadlines for the submission of data. In addition to the data submission requirements, the rules include requirements for ADHS reports on data from the trauma registry, confidentiality requirements for trauma registry data and trauma system quality assurance data, and provisions for trauma registry data quality assurance. The rules were created by ADHS with input from the Trauma Data Rulemaking Work Group, a group of stakeholders convened by ADHS with the approval of the State Trauma Advisory Board (STAB) and its Arizona Trauma System Quality Assurance and System Improvement Committee (AZTQ). After reaching consensus on draft rules with the Work Group, ADHS received support for the draft rules from both STAB and AZTQ. ADHS also solicited informal public comment on the rules before filing its Notice of Proposed Rulemaking.

The rules will add a number of data elements that are not currently required to be collected or submitted by reporting hospitals. ADHS is adding these data elements to align the ADHS trauma registry with the uniform data set collected by the American College of Surgeons Committee on Trauma's (ACS-COT's) National Trauma Data Bank (NTDB). The NTDB is a nonproprietary national repository for trauma registry data, designed with the goal of collecting data on every patient treated in every trauma center in the U.S. With the NTDB, the ACS-COT aspires to inform the medical community, the public, and decision makers about issues related to care of injured persons in the U.S. The insight gained through the NTDB can potentially impact epidemiology, injury control, research, education, acute care, and resource allocation. The NTDB furthers the mission of the ACS-COT: "to improve the care of injured patients through systematic efforts in prevention, care, and rehabilitation."

The trauma registry is important to ADHS and the state of Arizona because it allows ADHS to assess the quality of trauma services provided in Arizona. Having standardized data for the trauma services provided throughout the state will enable ADHS to evaluate the incidence, causes, severity, and outcomes for trauma cases and the operation of the Arizona trauma system and its components. Ideally, the analysis of trauma registry data will result in improved trauma care and enhanced injury prevention activities for the citizens of and visitors to Arizona.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

ADHS did not review any studies related to this rulemaking.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

As used in this summary, "minimal" means less than $1,000; "moderate" means $1,000 to $9,999; "substantial" means $10,000 or more; and "significant" means meaningful or important, but not readily subject to quantification.

ADHS will incur minimal-to-moderate costs from the rulemaking process and substantial costs as a result of the rule changes. To implement the rule changes, ADHS must pay to upgrade the software used by ADHS to operate the trauma registry and used by reporting hospitals to operate their own trauma registries and submit trauma registry data to ADHS. The total estimated software upgrade cost is $12,395. This is a one-time cost and does not include the ongoing software costs incurred for licenses, technical support, and training, which are not expected to be affected by the new rules.

Six of the 10 hospitals currently reporting trauma patient data to the trauma registry anticipate incurring additional costs as a result of the new rules. The additional costs incurred will depend upon the hospital's current trauma registry operations. Based on estimates provided by the hospitals, one will incur minimal increased costs, three will incur moderate increased costs, and two will incur substantial increased costs (estimated at approximately $19,032 to $28,558 for one and approximately $56,160 to $78,000 for the other). Three of the 10 hospitals currently reporting trauma patient data to the trauma registry anticipate incurring no additional costs as a result of the new rules. One hospital currently reporting trauma patient data to the trauma registry did not respond to ADHS's request for information on the impact of the new rules.

ADHS and the citizens of and visitors to Arizona should receive significant benefits as a result of the rules. Having standardized data related to trauma services will enable ADHS to assess the quality of trauma services provided in Arizona and to evaluate the incidence, causes, severity, and outcomes for trauma cases and the operation of the Arizona trauma system and its components. Ideally, the analysis of trauma registry data will result in improved trauma care and enhanced injury prevention activities for the citizens of and visitors to Arizona.

ADHS believes that third-party payers for trauma services may also ultimately receive a significant benefit from the new rules, if the rules result in improved trauma care and enhanced injury prevention activities in Arizona. It is not yet possible to determine what the extent of that benefit might be or when it would be realized.

ADHS does not believe that any small businesses are subject to the rules or that there is a less intrusive or less costly alternative method of achieving the purpose of the rulemaking.

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

Minor grammatical or formatting changes were made at the request of G.R.R.C. staff.

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

The Department did not receive any comments for 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. Any materials incorporated by reference and its location in the text:

R9-25-1401(2): Association for the Advancement of Automotive Medicine Committee on Injury Scaling, *Abbreviated Injury Scale (AIS) 2005* (2005)

14. Were these rules previously made as an emergency rules?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

ARTICLE 14. TRAUMA REGISTRY; TRAUMA SYSTEM QUALITY ASSURANCE

Section

2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, and 36-2225(A)(5) and (6))

R9-25-1404. Retention of Reports and Requests for Reports (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

R9-25-1405. Confidentiality and Retention of Trauma System Quality Assurance Data (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, 36-2223(E)(3), 36-2225(A)(5) and (6), 36-2403(A), and 36-2404)

R9-25-1406. Trauma Registry Data Quality Assurance (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, and 36-2225(A)(5) and (6))

ARTICLE 14. TRAUMA REGISTRY; TRAUMA SYSTEM QUALITY ASSURANCE

R9-25-1401. Definitions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

The following definitions apply in this Article, unless otherwise specified:

1. "Aggregate trauma data" means a collection of data from the trauma registry that is compiled so that it is not possible to identify a particular trauma patient, trauma patient's family, health care provider, or health care institution.
2. "AIS" means abbreviated injury scale, an anatomic severity scoring system established in Association for the Advancement of Automotive Medicine Committee on Injury Scaling, *Abbreviated Injury Scale (AIS) 2005* (2005), incorporated by reference, including no future editions or amendments, and available from Association for the Advancement of Automotive Medicine, P.O. Box 4176, Barrington, IL 60011-4176, and www.carcrash.org.
3. "ALS base hospital" has the same meaning as "advanced life support base hospital" in A.R.S. 36-2201.
4. "Case" means a patient who meets R9-25-1402(A)(1), (2), or (3).
5. "Category" means a group of related codes within the ICD-9-CM, identified by the first three digits of each code number within the group, and including all code numbers that share the same first three digits.
6. "Data element" means a categorized piece of information.
7. "Data set" means a collection of data elements that includes, for each case, data that complies with Table 1.
8. "Department" means the Arizona Department of Health Services.
9. "ED" means emergency department, an organized area of a hospital that provides unscheduled emergency services, as defined in A.A.C. R9-10-201, 24 hours per day, seven days per week, to individuals who present for immediate medical attention.
10. "EMS" has the same meaning as "emergency medical services" in A.R.S. § 36-2201.
11. "EMS provider" has the same meaning as "emergency medical services provider" in A.R.S. § 36-2201.
12. "GCS" means Glasgow Coma Scale, a scoring system that defines eye, motor, and verbal responses in the patient with injury.
13. "Health care institution" has the same meaning as in A.R.S. § 36-401.
14. "Health care provider" means a caregiver involved in the delivery of trauma services to a patient, whether in a pre-hospital setting, in a hospital setting, or during rehabilitation.
15. "Hospital" has the same meaning as in A.A.C. R9-10-201.
16. "ICD-9-CM" has the same meaning as in A.A.C. R9-4-101.
17. "ICD-9-CM E-code" means the external cause of injury as coded according to the ICD-9-CM.
18. "ICD-9-CM N-code" means the nature of injury as coded according to the ICD-9-CM.
19. "ICD-9-CM Procedure Code" means the procedure performed on a patient as coded according to the ICD-9-CM.
20. "Injury" means the result of an act that damages, harms, or hurts; unintentional or intentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy or from the absence of such essentials as heat or oxygen.
21. "ISS" has the same meaning as in R9-25-1301.
22. "Owner" has the same meaning as in R9-25-1301.
23. "Patient" means an individual who is sick, injured, or dead and who requires medical monitoring, medical treatment, or transport.
24. "Scene" means a location, other than a health care institution, from which a patient is transported.
25. "Submitting health care institution" means a health care institution that submits data to the trauma registry as provided in R9-25-1402.
26. "Trauma center" means a health care institution that meets the definition of "trauma center" in A.R.S. § 36-2201 or the definition of "trauma center" in A.R.S. § 36-2225.
27. "Trauma registry" has the same meaning as in A.R.S. § 36-2201.
28. "Trauma team" means a group of health care providers organized to provide care to trauma patients.
29. "Trauma team activation" means notification of trauma team members in response to triage information received concerning a patient with injury or suspected injury.
30. "Trauma triage protocol" means a "triage protocol," as defined in R9-25-101, specifically designed for use with patients with injury.

R9-25-1402. Data Submission Requirements (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

A. As required under A.R.S. § 36-2221 and R9-25-1313, an owner of a trauma center shall ensure that the data set identified in Table 1 is submitted to the Department, as prescribed in subsection (B), for each patient who meets one or more of the following criteria:

1. A patient with injury or suspected injury who is triaged from a scene to a trauma center or ED based upon the responding EMS provider's trauma triage protocol;
2. A patient with injury or suspected injury for whom a trauma team activation occurs; or
3. A patient with injury who is admitted as a result of the injury or who dies as a result of the injury, who has an ICD-9-CM N-code within categories 800 through 959, and who does not only have:
   a. Late effects of injury or another external cause, as demonstrated by an ICD-9-CM N-code within categories 905 through 909;
   b. A superficial injury or contusion, as demonstrated by an ICD-9-CM N-code within categories 910 through 924;
   c. Effects of a foreign body entering through an orifice, as demonstrated by an ICD-9-CM N-code within categories 930 through 939;
   d. An isolated femoral neck fracture from a same-level fall, as demonstrated by:
      i. An ICD-9-CM N-code within category 820; and
      ii. An ICD-9-CM E-code within category E885 or E886;
   e. An isolated distal extremity fracture from a same-level fall, as demonstrated by:
      i. An ICD-9-CM N-code within categories 813 through 817 or within categories 823 through 826; and
      ii. An ICD-9-CM E-code within category E885 or E886;
   f. An isolated burn, as demonstrated by an ICD-9-CM N-code within categories 940 through 949.

B. An owner of a trauma center shall submit the data required under subsection (A) to the Department:

1. On a quarterly basis according to the following schedule:
   a. For cases identified between January 1 and March 31, so that it is received by the Department by July 1 of the same calendar year;
   b. For cases identified between April 1 and June 30, so that it is received by the Department by October 1 of the same calendar year;
   c. For cases identified between July 1 and September 30, so that it is received by the Department by January 2 of the following calendar year; and
   d. For cases identified between October 1 and December 31, so that it is received by the Department by April 1 of the following calendar year;
2. Through an electronic reporting system authorized by the Department;
3. In a format authorized by the Department; and
4. Along with the following information:
   a. The name and physical address of the trauma center;
   b. The date the trauma data is being submitted to the Department;
   c. The total number of cases for whom trauma data is being submitted;
   d. The quarter and year for which trauma data is being submitted;
   e. The range of ED or hospital arrival dates for the cases for whom trauma data is being submitted;
   f. The name, title, phone number, fax number, and e-mail address of the trauma center's point of contact for the trauma data; and
   g. Any special instructions or comments to the Department from the trauma center's point of contact.

C. An ALS base hospital certificate holder that chooses to submit trauma data to the Department, as provided in A.R.S. § 36-2221, shall comply with the data submission requirements in this Section for an owner of a trauma center.

Table 1. Trauma Registry Data Set (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

KEY:

Required for TC Levels I, II, and III = An owner of a hospital designated as a Level I, Level II, or Level III trauma center under Article 13 of this Chapter shall include these data elements in the data submission required under R9-25-1402.

Required for TC Level IV, Non-Designated TC, and ALS Base Hospital = An owner of a health care institution designated as a Level IV trauma center under Article 13 of this Chapter; an owner of a trauma center, as defined in A.R.S. § 36-2201, that is not designated as a trauma center under Article 13 of this Chapter; or an ALS base hospital certificate holder that submits trauma data as provided under A.R.S. § 36-2221 shall include these data elements in the data submission required under R9-25-1402.

* = Only required for hospitals designated as Level I trauma centers under Article 13 of this Chapter.

Field Name/Data Element Description	Required for TC Levels I, II, and III	Required for TC Level IV, Non-Designated TC, and ALS Base Hospital
DEMOGRAPHIC DATA ELEMENTS		
Reporting Facility Site ID	X	X
Registration Number	X	X
Medical Record Number	X	X
Hospital Admission Date	X	X
Admission Status	X	X
Patient Last Name	X	X
Patient First Name	X	X
Patient Middle Initial	X	X
Social Security Number	X	X
Date of Birth	X	X
Age	X	X
Units of Age	X	X
Gender	X	X
Race	X	X
Ethnicity	X	X
Zip Code of Residence	X	
City of Residence	X	
County of Residence	X	
State of Residence	X	X
Country of Residence	X	
Alternate Home Residence	X	
Co-Morbid Conditions (Pre-Existing)	X	
INJURY DATA ELEMENTS		
Injury Date	X	X
Injury Time	X	X
Actual versus Estimated Injury Time	X	
Injury Location ICD-9-CM E-code (E849)	X	X
Street Location of Injury	X	
Zip Code of Injury	X	X
City of Injury	X	X
County of Injury	X	
State of Injury	X	
Primary ICD-9-CM E-code Injury Descriptor	X	X
Additional ICD-9-CM E-code Injury Descriptor	X	
Trauma Type	X	
Work-Related	X	
Patient Occupational Industry	X	
Patient Occupation	X	
Patient Position in Vehicle	X	
Protective Devices	X	X
Child Specific Restraint	X	

Airbag Deployment	X	
Safety Equipment Issues	X	
PREHOSPITAL TRANSPORT DATA ELEMENTS		
EMS Provider Type	X	
Transport Mode (Into Reporting Facility)	X	X
Other Transport Modes	X	
Transport Agency	X	
Run Sheet Available?	X	
Run Sheet Date	X	
Transported From	X	
Date EMS Provider Notified	X	
Time EMS Provider Notified	X	
Date EMS Provider Left for Scene	X	
Time EMS Provider Left for Scene	X	
Date EMS Provider Arrived at Scene	X	
Time EMS Provider Arrived at Scene	X	
Date of EMS Patient Contact	X	
Time of EMS Patient Contact	X	
Date EMS Provider Departed Scene	X	
Time EMS Provider Departed Scene	X	
Date of Arrival at Destination	X	
Time of Arrival at Destination	X	
EMS Destination	X	
Total EMS Response Time (Minutes)	X	
Total EMS Scene Time (Minutes)	X	
Transport Time – Scene to Destination (Minutes)	X	
Total EMS Time (Minutes)	X	
System Access	X	
Triage Criteria	X	X
Date of Measurement of Vital Signs	X	
Time of Measurement of Vital Signs	X	
Initial Field Pulse Rate	X	
Initial Field Respiratory Rate	X	
Initial Field Oxygen Saturation	X	
Field Airway Management Details	X	
Field Intubation Status	X	
Field Paralytic Agent in Effect	X	
Initial Field Systolic Blood Pressure	X	
Initial Field GCS – Eye Opening	X	
Initial Field GCS – Verbal Response	X	
Initial Field GCS – Motor Response	X	
Initial Field GCS – Total	X	
Field Revised Trauma Score	X	
REFERRING/TRANSFER HOSPITAL DATA ELEMENTS		
Interfacility Transfer	X	
Date of Arrival at First Referring Hospital	X	

Time of Arrival at First Referring Hospital	X	
Date of Transfer from First Referring Hospital	X	
Time of Transfer from First Referring Hospital	X	
Transferring Facility (First Referring)	X	
Length of Stay in First Referring Hospital (Hours)	X	
Destination Facility	X	
Date of Arrival at Second Referring Hospital	X	
Time of Arrival at Second Referring Hospital	X	
Date of Transfer from Second Referring Hospital	X	
Time of Transfer from Second Referring Hospital	X	
Transferring Facility (Second Referring)	X	
Length of Stay in Second Referring Hospital (Hours)	X	
Destination Facility	X	
Vital Signs Designation (If First or Second Referring)	X	
Initial Respiratory Rate in Referring Facility	X	
Initial Systolic Blood Pressure in Referring Facility	X	
Initial GCS Total in Referring Facility	X	
Initial Revised Trauma Score in Referring Facility	X	
ED/TRAUMA DATA ELEMENTS		
ED/Hospital Arrival Date	X	X
ED/Hospital Arrival Time	X	X
ED Exit Date	X	X
ED Exit Time	X	X
Length of Stay in ED (Hours)	X	X
Complete Trauma Team Arrival Time	X	
ED Discharge Disposition	X	X
ED Discharge Destination Hospital	X	X
Discharge Transport Agency	X	
Transfer Reason	X	
ED/Hospital Initial Pulse Rate	X	
ED/Hospital Initial Respiratory Rate	X	
ED/Hospital Initial Respiratory Assistance	X	
ED/Hospital Initial Oxygen Saturation	X	
ED/Hospital Initial Supplemental Oxygen	X	
ED/Hospital Intubation Status	X	
ED/Hospital Paralytic Agent in Effect	X	
ED/Hospital Initial Systolic Blood Pressure	X	
ED/Hospital Initial GCS – Eye Opening	X	
ED/Hospital Initial GCS – Verbal Response	X	
ED/Hospital Initial GCS – Motor Response	X	
ED/Hospital Initial GCS – Total	X	
ED/Hospital Initial GCS Assessment Qualifiers	X	
ED/Hospital Initial Temperature	X	
ED/Hospital Initial Units of Temperature	X	
ED/Hospital Initial Temperature Route	X	
ED/Hospital Initial Revised Trauma Score	X	

Alcohol Use Indicator	X	
Blood Alcohol Content (mg/dl)	X	
Drug Use Indicator	X	
Toxicology Substances Found	X	
DISCHARGE DATA ELEMENTS		
Hospital Discharge Date	X	X
Hospital Discharge Time	X	X
Hospital Admission Length of Stay (Days)	X	X
Total Length of Hospital Stay – ED plus Admission (Days)	X	
Final Outcome – Dead or Alive	X	X
Total ICU Length of Stay (Days)	X	X
Total Ventilator Days	X	
Hospital Discharge Disposition	X	X
Hospital Discharge Destination Hospital	X	X
Discharge Transport Agency	X	
Transfer Reason	X	
Autopsy Identification Number	X	
Injury Diagnoses – ICD-9-CM N-codes	X	X
AIS Six-Digit Injury Identifier	X*	
AIS Severity Code	X	
AIS Body Region of Injury	X	
Injury Severity Score	X	
Probability of Survival	X	
ED/Hospital Procedure Location	X	
ED/Hospital Procedure Start Date	X	
ED/Hospital Procedure Start Time	X	
ED/Hospital ICD-9-CM Procedure Codes	X	
Hospital Complications	X	
Primary Method of Payment	X	
Secondary Method of Payment	X	
Total Hospital Charges	X	
Total Reimbursements	X	

R9-25-1403. Trauma System Data Reports; Requests for Trauma Registry Reports (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, and 36-2225(A)(5) and (6))

A. The Department shall produce and disseminate to each submitting health care institution a quarterly trauma system data report that includes statewide aggregate trauma data.

B. A person may request to receive a report containing statewide aggregate trauma data for data elements not included in the quarterly trauma system data report by submitting a written public records request to the Department as provided in A.A.C. R9-1-303.

C. The Department shall process a request for a report submitted under subsection (B) as provided in A.A.C. R9-1-303.

D. As provided in A.R.S. § 36-2220(A)(1), Trauma Registry data from which a patient, the patient's family, or the patient's health care provider or facility might be identified is confidential and is not available to the public.

R9-25-1404. Retention of Reports and Requests for Reports (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

The Department shall retain copies of each quarterly trauma system data report, request for a report submitted under R9-25-1403(B), and report generated under R9-25-1403(B) for at least 10 years after the date of the report or request for a report.

R9-25-1405. Confidentiality and Retention of Trauma System Quality Assurance Data (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, 36-2223(E)(3), 36-2225(A)(5) and (6), 36-

2403(A), and 36-2404)

A. As provided in A.R.S. §§ 36-2220(A)(2) and 36-2403(A), all data and documents obtained by the Department or considered by the Department, the State Trauma Advisory Board, or a State Trauma Advisory Board subcommittee for purposes of trauma system quality assurance are confidential and are not available to the public.

B. The Department shall ensure that:

1. Each member of the State Trauma Advisory Board or member of a State Trauma Advisory Board subcommittee who will have access to the data and documents described in subsection (A) executes a written confidentiality statement before being allowed access to the data and documents;
2. All trauma system quality assurance activities are completed in executive session during State Trauma Advisory Board or State Trauma Advisory Board subcommittee meetings;
3. Except for one historical copy, all copies of data and documents described in subsection (A) and used during an executive session are collected at the end of the executive session and destroyed after the State Trauma Advisory Board or State Trauma Advisory Board subcommittee meeting; and
4. Executive session minutes and all copies of data and documents described in subsection (A) are maintained in a secure area and are accessible only to authorized Department employees.

R9-25-1406. Trauma Registry Data Quality Assurance (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, and 36-2225(A)(5) and (6))

A. To ensure the completeness and accuracy of trauma registry reporting, a submitting health care institution shall allow the Department to review the following, upon prior notice from the Department of at least five business days:

1. The submitting health care institution's database that includes data regarding cases;
2. Patient medical records; and
3. Any record, other than those specified in subsections (A)(1) and (2), that may contain information about diagnostic evaluation or treatment provided to a patient.

B. Upon prior notice from the Department of at least five business days, a submitting health care institution shall provide the Department with all of its patient medical records for a time period specified by the Department, to allow the Department to review the patient medical records and determine whether the submitting health care institution has submitted data to the trauma registry for the cases who received medical services within the time period.

C. For purposes of subsection (B), the Department considers a submitting health care institution to be in compliance with R9-25-1402(A) if the submitting health care institution submitted data to the trauma registry for 97% of the cases who received medical services within the time period.

D. The Department shall return to a submitting health care institution data not submitted in compliance with R9-25-1402 and shall identify the revisions that are needed to bring the data into compliance with R9-25-1402.

E. A submitting health care institution that has trauma registry data returned as provided in subsection (D) shall revise the data as identified by the Department and shall submit the revised data to the Department within 15 business days after the date the Department returned the data or within a longer period agreed upon between the Department and the submitting health care institution.

F. Within 15 business days after receiving a written request from the Department that includes a simulated patient medical record, a submitting health care institution shall prepare and submit to the Department the data set identified in Table 1 for the patient described in the simulated patient medical record.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R07-390]

PREAMBLE

1. Sections Affected	Rulemaking Action
R12-5-2101	New Section
R12-5-2104	Amend
R12-5-2105	Amend
R12-5-2106	Amend
R12-5-2115	Amend
R12-5-2118	Amend
R12-5-2120	Amend

R12-5-2122 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. § 37-132(A)(1)

Implementing statute: A.R.S. §§ 27-552, 27-556, 27-557

3. The effective date of the rules:

January 5, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2450, July 6, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2514, July 13, 2007

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

Name:	Richard B. Oxford, Director, LIT & T Division
Address:	1616 W. Adams Phoenix, AZ 85007
Telephone:	(602) 542-4602
Fax:	(602) 542-5223
E-mail:	roxford@land.az.gov
or	
Name:	Mike Rice, Manager, Minerals Section
Address:	1616 W. Adams Phoenix, AZ 85007
Telephone:	(602) 542-4628
Fax:	(602) 542-3407
E-mail:	mrice@land.az.gov

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

In 1980 and 1982, the statutes governing oil and gas leasing on state lands were extensively revised, thus rendering the majority of the rules for competitive oil and gas leases obsolete or ineffective (Laws 1980, Ch. 80, § 1; Laws 1982, Ch. 299, § 2). The remaining oil and gas rules under Title 12, Chapter 5, Article 21 are applicable to conflicting applications for non-competitive oil and gas leases or simultaneous filings for non-competitive oil and gas leases. The rules are repetitive or inconsistent with statute, contain antiquated language and require updating to meet current Secretary of State's rulewriting standards.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 Agency did not review any study relevant to the rule.

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 Department maintains 202 oil and gas leases encompassing 335,268 acres of Trust land. *Table 1* summarizes oil and gas revenue production for Fiscal Years 2000-2006. The revenues collected are primarily oil and gas lease rentals. Only in FY 2002-2003 did a state lessee commercially produce carbon dioxide gas from a state lease and pay a royalty to the state.

Table1. Oil and gas leases, acreages and revenues from State Trust Lands from Fiscal Years 2000 - 2006

Fiscal Year	Number of Leases	Number of Acres	Rental Revenue	Royalty Revenues
2000	109	191,500	$200,000 313,600	0
2001	136	233,800	476,900 471,600	0
2002	190	324,000	482,600	0
2003	213	363,600	460,500	$21,800*
2004	228	382,100	398,800	0
2005	227	374,663		0
2006	206	335,300		0

*Carbon dioxide royalty

The majority of the Department's oil and gas leases are located in Apache County in the St. Johns – Springerville area. The leases focus on the large helium and carbon dioxide resource field within the area. If developed, the Department estimates royalties will exceed $100 million over the life of the resource. The state and trust beneficiaries will benefit from development of these reserves as will many small businesses and individuals in the region resulting from retail sales, labor and supplies associated with the exploration and development of the gas field.

Costs to an oil and gas lease applicant include personal or staff time to research the records of various agencies (i.e. Arizona State Land Department, Arizona Oil and Gas Commission, U.S. Department of Energy) and institutions (i.e. University of Arizona, Department of Geological Sciences) to collect data in order to compile the information required for a state oil and gas lease application. Because oil and gas resource development requires the interpretation of highly specialized geological data, an applicant may also require the consulting services of a professional petroleum geologist whose fees are approximately $700 - $1000 per day. Plans of operations, reclamation of drill site, and compliance with other laws and rules of other state, federal and local government agencies, will also add to the applicant's costs to explore, drill and develop oil and gas resources on state land. Pursuant to A.R.S. § 27-560, the State Land Commissioner may require the applicant to post a bond to ensure reclamation and compensation to the surface lessee in the event of damage to the lessee's improvements, i.e. fencing.

As competitive oil and gas leases are auctioned to the highest qualified bidder, the applicant will need to secure funding to compete against competitive bidders. The annual rental, $1.00 per acre under lease, is paid in advance by the successful bidder and is in addition to the bid price and bonus bid.

The applicant will also incur costs associated with oil and gas resource exploration including:

1. Costs in exploration and assessment;
2. Costs in oil and gas resource development;
3. Marketing costs;
4. Equipment, labor costs;
5. Taxes;
6. Other permits that may be required (state, federal, local government).

Historically, there has been a limited amount of oil and gas exploration on Arizona's trust lands. What little exploration there has been did not develop beyond the initial leasing stage. One of the major administrative problems associated with oil and gas leasing and development is the preponderance of state and federal laws and rules governing the activity. Exploration and development of oil and gas resources as well as compliance with multiple agency rules is costly in time and money to the applicants as well as to the various agencies.

The Department proposes to amend its oil and gas leasing rules to ensure clarity and efficiency as well as to prevent the Department from being an impediment to any future interest in exploration and development of oil and gas resources on Trust lands.

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

The final rules include minor, technical and grammatical changes made at the suggestion of G.R.R.C. staff.

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

No comments were received by the agency.

12. Any other matters prescribed by statute that are applicable to the specific agency or 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 n emergency rule?
No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 21. OIL AND GAS LEASES

Section
R12-5-2101. ~~Expired~~ Completed Oil and Gas Lease Application
R12-5-2104. Application for Noncompetitive Lease; ~~Time for Filing~~ Acreage Limitation
R12-5-2105. Simultaneous Filings; Conflicts
R12-5-2106. ~~Department's Decisions—Conflicts~~ Noncompetitive Lease; Conflict
R12-5-2115. Competitive Lease; Award of Lease
R12-5-2118. Cooperative and Unit Agreements
R12-5-2120. Surrender
R12-5-2122. Monthly Statement

ARTICLE 21. OIL AND GAS LEASES

R12-5-2101. ~~Expired~~ Completed Oil and Gas Lease Application

An oil and gas lease application, filed pursuant to this Article, shall be on a form prescribed and furnished by the Department. The application is complete if all blank spaces are addressed with all required attachments. The applicant may indicate "not applicable" or "N/A" on any blank, as appropriate. The applicant shall complete the application's certification page pursuant to the instructions. An applicant shall appropriately sign and date the application.

R12-5-2104. Application for Noncompetitive Lease; ~~—Time for Filing~~ Acreage Limitation

A. The Department shall not issue an oil and gas lease on land already leased for that purpose. If state lands are not located within a known geological structure of a producing oil or gas field, a person shall submit a noncompetitive oil and gas lease ~~Applications~~ application for a noncompetitive oil and gas ~~leases~~ lease. ~~shall be received for filing in the office of the Department in Phoenix during the office hours of any business day. Except as hereinafter specifically provided, all such applications received, whether by U.S. Mail or by personal delivery over the counter, shall be immediately stamped with the date and time of filing. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department.~~ State lands under a single oil and gas lease application shall not exceed 2,560 acres which shall be the maximum acreage of state lands in a noncompetitive oil and gas lease. The lands under application shall be in as compact a body as possible. The application may include non-contiguous state lands within a six mile square area if the maximum acreage of contiguous land is not available, but shall not exceed 2,560 acres.

B. An applicant shall submit the completed noncompetitive oil and gas lease application to the Department's Phoenix Office, 1616 W. Adams, Phoenix, AZ 85007, to the attention of Public Records, along with payment of the required application fee pursuant to A.R.S. § 37-108 and advanced rent payment as calculated under A.R.S. § 27-555 (D). ~~The time of filing so indicated on each application shall evidence the priority of the first qualified applicant and the right to a lease which may be had thereby; subject, however, to the adjudication of conflicts which may arise by reason of applications simultaneously filed as hereinafter set forth.~~ The first applicant to file a complete noncompetitive oil and gas lease application with required fees and advance rental payment has priority to the lease. The Department shall resolve conflicts resulting from simultaneously filed noncompetitive oil and gas lease applications in accordance with Rule R12-5-2105.

R12-5-2105. Simultaneous Filings; Conflicts

A. ~~In the event it is determined that two or more applications for a lease have been filed at the same time as indicated by the time stamp applied as set forth in rule 4, such applications shall be deemed to be simultaneous filings.~~ An 8:00 a.m. simultaneous filing of an application for a noncompetitive oil and gas lease exists when a noncompetitive oil and gas lease application is submitted along with required payments by an individual present at the Department's Phoenix Office, Pub-

lic Records Room at 8:00 a.m. Each application submitted in accordance with this rule will be time stamped and considered an 8:00 a.m. simultaneous filing. ~~In the event~~ If two or more simultaneously filed applications include any identical land ~~which are identical,~~ a conflict ~~shall exist~~ exists as to ~~such lands~~ the identical land. ~~Adjudication of~~ The Department shall resolve conflicts ~~shall be~~ in accordance with ~~the provisions of rule 6 thereof.~~ Rule R12-5-2106.

B. Any application found to be invalid or not completed pursuant to R12-5-2101, after being stamped as an "8:00 a.m. simultaneous filing" shall not be considered an "8:00 a.m. simultaneous filing."

R12-5-2106. ~~Department's Decisions - Conflicts~~ Noncompetitive Lease; Conflict

~~The Department will not issue any lease pursuant to an application unless the land is vacant, and then in accordance with the following procedure:~~

~~1. No conflict. Where there is no conflict, the Department shall issue a noncompetitive lease to the first qualified applicant.~~

~~2. Conflicts.~~ Where there is a conflict, and the Department determines that a drawing will be held for a noncompetitive oil and gas lease, the Department shall ~~provide for~~ conduct a drawing ~~between the qualified applicants~~ to determine which applicant ~~shall be~~ is entitled to a lease. The Department shall give notice of the drawing by certified mail to the ~~conflicting~~ applicants that filed conflicting applications ~~by registered mail, fixing a~~ specifying the date and hour ~~on which a~~ when the drawing will be held. ~~for the land in conflict, which date shall not be less than 10 days or more than 30 days from the date of said notice. The applicants~~

1. An applicant may ~~remove the conflict by~~ file an amended application that removes the conflict ~~which shall carry the same filing date as the original application,~~ at any time prior to the date of the drawing. The effective date of the amended application shall be the original time and date of filing of the original application. ~~Rentals advanced applicable to~~ The Department shall refund to the applicant advance rentals for the lands withdrawn from conflict. ~~shall be refunded to the applicant. If, however, the conflict is not so removed, the drawing will be held and the lease, by the Department decision, will be awarded to the winner.~~
2. The Department ~~will then~~ shall give notice of the results of ~~said~~ the drawing to each applicant by certified mail.

R12-5-2115. Competitive Lease; Award of Lease

When state lands are located within a known geological structure of a producing oil or gas field, the oil and gas interest in the land shall be leased only by sealed bid. ~~Following the~~

1. Within 30 days of opening of sealed bids, the Department, subject to its right to reject ~~any or all bids,~~ a bid, shall award the lease to the ~~successful~~ highest qualified bidder. ~~Notice of the Department's action shall be forthwith transmitted~~ The Department shall give notice of its decision, by certified mail, to the ~~interested parties~~ applicants. ~~The Department shall return forthwith all checks accompanying rejected bids. If the lease be awarded, two copies of the lease,~~
2. The Department shall send a lease offer ~~will be sent~~ to the successful bidder~~.~~, ~~and he~~ The successful bidder ~~will~~ shall ~~be sent to the successful bidder, and he will be required within 30 days from receipt thereof to~~ execute ~~them,~~ the leases and pay the first year's rental, ~~the cost of publication, and the reasonable expenses of the sale.~~ within 30 days from receipt of the lease offer. ~~If a bidder, after having been awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited.~~
3. If two or more tracts, where the acreage does not exceed more than two sections of land, are awarded to any bidder ~~where the acreage does not exceed more than two sections of land, such~~ the tracts may, if not otherwise prohibited by law, be included in a single lease.

R12-5-2118. Cooperative and Unit Agreements

~~Commitment of leased state lands to~~ A lessee seeking the Commissioner's approval of a cooperative or unit ~~agreements~~ agreement under A.R.S. § 27-557, shall ~~be conditioned on~~ comply with the following procedure and requirements.

1. ~~That there be submitted~~ To facilitate the Department's decision making process and to allow an applicant to obtain feedback prior to formal submission, an applicant shall submit the following information no less than 60 days before submitting a cooperative or unit agreement for approval: ~~to the Department two copies~~
   a. A copy of a plat map showing the area to be ~~unitized, together with such structural and geological information as will tend to support the delineation of the area. The information so furnished shall be held confidential until released by the applicant or applicants.~~ included in the cooperative or unit agreement;
   b. Structural and geological information that supports the land to be included in the cooperative or unit agreement; and

~~2. That there be submitted to the Department two preliminary drafts of the agreement for approval as to form. Where the amount of federal land predominates in any area, the standard form of unit agreement of the United States should be followed.~~

   c. A draft of the proposed cooperative or unit agreement for the Department's review.
   d. If the proposed cooperative or unit agreement includes federal lands, and if by inclusion of those lands, the federal government requires standard provisions for a cooperative or unit agreement, the applicant shall submit a proposed cooperative or unit agreement that includes the federal provisions.

~~3. Upon determination by the Department that it is for the best interest of the state to commit leased state lands to a cooperative or unit agreement for the development and operation of an oil or gas pool, the Department shall thereafter finally join in and consent to such agreement when submitted for final approval.~~

~~4.~~2. A cooperative or unit agreement ~~shall~~ does not affect the leasehold of any leased state lands ~~lying~~ outside of the cooperative or unit area~~,~~. ~~and shall~~ The cooperative or unit agreement does not ~~be effective as to the~~ affect leaseholds ~~lying~~ within the cooperative or unit area unless the lessees' ~~thereof and the then approved operating interests shall subscribe to such an agreement.~~ land is committed to the cooperative or unit area pursuant to A.R.S. §§ 27-557 or 27-531 et seq.

~~5. The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.~~

R12-5-2120. Surrender

A lessee may surrender to the Department a lease or any part ~~thereof~~ of a lease, but not less than ~~a~~ an approximate ~~quarter of a quarter section~~ 40 acre parcel. ~~or the approximate equivalent thereof, may be surrendered at any time by the record title holder thereof to the lessor upon payment to the Department of all amounts then due as to the lands so surrendered. No refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee or record title holder upon any such surrender. Such surrender shall be made by depositing with~~ A lessee shall surrender the lease or a part of a lease to the Department by submitting to the Department one copy of the ~~instrument of surrender together~~ lease and ~~the prescribed surrender fee and thereafter~~ any monies owed. ~~the lessee or record title holder shall incur no further liability under said lease as to the land so surrendered.~~

R12-5-2122. Monthly Statement

A lessee shall submit to the Department a monthly ~~statements~~ statement of oil or gas production and other statements required of the lessee under the lease. ~~shall be made in triplicate and shall be transmitted to the Department.~~

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-395]

PREAMBLE

1. Sections Affected	**Rulemaking Action**
Article 12	New Article
R20-5-1201	New Section
R20-5-1202	New Section
R20-5-1203	New Section
R20-5-1204	New Section
R20-5-1205	New Section
R20-5-1206	New Section
R20-5-1207	New Section
R20-5-1208	New Section
R20-5-1209	New Section
R20-5-1210	New Section
R20-5-1211	New Section
R20-5-1212	New Section
R20-5-1213	New Section
R20-5-1214	New Section
R20-5-1215	New Section
R20-5-1216	New Section
R20-5-1217	New Section
R20-5-1218	New Section
R20-5-1219	New Section
R20-5-1220	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. § 23-364(A), as added by 2006 Proposition 202, § 2.

Implementing Statute(s): A.R.S. §§ 23-362, 23-363, 23-364(B) through (D), (F), and (G), as added by 2006 Proposition 202, § 2.

3. The effective date of the rules:

The Commission requests that the rules become effective upon the expiration of the Emergency Rules currently in effect (January 12, 2008).

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 873, March 16, 2007

Notice of Rulemaking Docket Opening: 13 A.A.R. 2173, June 22, 2007

Notice of Emergency Rulemaking, effective January 25, 2007: 13 A.A.R. 473, February 16, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2142, June 22, 2007

Notice of Renewal of Emergency Rulemaking, effective July 16, 2007: 13 A.A.R. 2785, August 10, 2007

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

Name:	Nancy O. Johnson
Address:	800 W. Washington St., Suite 303 Phoenix, AZ 85007
Telephone:	(602) 542-5948
Fax:	(602) 542-6783
E-mail:	njohnson@ica.state.az.us

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

On November 7, 2006, the Arizona voters approved Proposition 202, referred to as the "Raise the Arizona Minimum Wage for Working Arizonans Act," ("Act"). On December 4, 2006, the Arizona Secretary of State certified the election results by signing the Official Canvas of the general election. Under A.R.S. § 23-364(A), which became effective January 1, 2007, the Industrial Commission of Arizona ("Commission") is given the authority to enforce and implement the Act. Emergency rules promulgated in response to direction in A.R.S. § 23-364(A) became effective on January 25, 2007. Those rules were renewed by Notice of Renewal of Emergency Rulemaking, 13 A.A.R. 2785, effective July 16, 2007. These rules will replace the emergency rules currently in effect and will:

a. Define relevant terms and identify non-exclusive factors for determining an employment relationship;

b. Provide criteria for the calculation of minimum wage, including the treatment of commissions and tips;

c. Implement the posting and recordkeeping requirements of the Act by specifying where notices shall be posted and how, and what, records are required to be kept for different classes of employees (e.g. employees receiving tips, employees working on a fixed schedule, and salaried employees who are exempt under 29 CFR 541);

d. Establish requirements for the filing of administrative complaints, including applicable deadlines for minimum wage complaints and complaints of retaliation;

e. Address hearing procedures under the Act, including the right to request a hearing before a Commission Administrative Law Judge, the conduct of the hearing and the right to request review or rehearing;

f. Address procedures for the collection of money, the assessment of civil penalties (including the assessment of penalties for engaging in conduct that hinders an investigation under the Act), and the informal resolution of disputes; and

g. Provide a mechanism for a small employer (or class of small employers) to request relief from certain recordkeeping requirements.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 statewide interest if the rules 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 statement:

Annual costs/revenues changes are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues.

The ICA will bear moderate to substantial costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process. The cost for enforcing

the rules is difficult to ascertain at this time, but will include staff time to investigate complaints and to litigate challenges to decisions.

These rules were promulgated in response to direction in A.R.S. § 23-364(A). The cost to the public, including Arizona employers and employees, are based on directives in statute, and may be substantial. The rules merely provide the process to implement those directives. Directives in this new statute that may have a substantial cost to employers are:

a. The increase in minimum wage;

b. The fact that the minimum wage applies to all employees under the Act;,

c. Credit for board, lodging and other items are no longer allowed; and

d. The assessment of civil penalties for violation of the Act.

The cost to Arizona employers for notifying their employees of their intent to exercise a tip credit under R20-5-1207(C) may have a minimal effect per employee.

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

1. R20-5-1210(E)(6): Typographical error. The citation to R20-5-1208 was changed to the correct citation of R20-5-1207(C).

2. Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

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

The Commission received 22 written comments and one speaker addressed the Commission at the oral proceeding regarding this rulemaking. Many of the comments addressed the issues in Comments 1 and 2 below. The issues raised and the Commission's responses are as follows:

Comment 1: The lodging credit, that is allowed under the Federal Labor Standards Act (FLSA) and that is included in the Commission's emergency rules, should not be removed from the proposed rules. Employers should be allowed to continue using the lodging credit in calculating the minimum wage of an employee.

Commission's response: Emergency rule R20-5-1207 currently allows credits toward the minimum wage for board and lodging, as well as other items such as uniforms and tools if it is agreed to in a collective bargaining agreement. Subsequently it was brought to the Commission's attention that the initiative's definition of "wage" only allowed for "monetary compensation," and not credits. Additional research was done, reviewing statutes in all states that have minimum wage laws. Based on that research, the Commission believes that all credits (other than the "tip" credit) should be removed from the rules. Unlike any other state's statutes, our minimum wage statute defines "wage" to include only "monetary compensation." (Emphasis added.) Many state statutes provide for board and lodging credits as part of their definition of "wage," and some states have specific statutes that address board and lodging credits. Therefore, the Commission believes that it does not have statutory authority to consider allowing the value of lodging (and other items) when computing an individual's entitlement to receive minimum wages under the Minimum Wage Act, and the language regarding these credits that is in the emergency rules is not in the proposed rules. Although the Commission encouraged interested parties to provide the Commission with legal authority for allowing board and lodging credits, none of the comments provided the Commission with authority supporting a different conclusion.

Comment 2: In order to clarify that employees who reside on the employer's premises are not entitled to wages 24 hours a day, seven days a week, add the following language to the definition of "hours worked" in R20-5-1201(6):

An employee who resides on the employer's premises is not engaged in "hours worked" all the time the employee is on the employer's premises. The Commission shall accept any reasonable agreement between the employer and employee about hours worked for purposes of this Article, provided that, if the employee is required to be on duty for 24 hours, then the employee must have at least five hours of uninterrupted sleep.

Commission's response: The Commission believes that the definition of "hours worked" in the proposed rulemaking is clear that an employee is only paid for hours actually on duty, and not just for time on the employer's premises. However, the emergency rules did have language specifying that the Commission would be guided by 29 CFR 785 when determining whether an employee is considered to be working for the purpose of the Minimum Wage Act. That language is not included in the proposed rules because the language is not regulatory. For the benefit of the regulated community, the Commission has agreed to issue a Substantive Policy Statement that is consistent with the current emergency rules regarding the reliance on 29 CFR 785, and will provide the regulated community with guidance in a variety of situations that may arise in this area. The language suggested above does not address all of the situations that may arise, and would, in some instances, actually be contrary to the principles set forth in 29 CFR 785. Additionally, a representative of the regulated community that supported the additional language identified above, withdrew the request for the language on their behalf, in reliance on the Commission's agreement to issue the Substantive Policy Statement.

Comment 3: Employers should not have to pay minimum wage to disabled workers.

Commission's response: On March 29, 2007 the Commission approved a Substantive Policy Statement that provides the Commission's interpretation of the term "employee" under the Act as it applies to work activities performed by individuals with disabilities. It distinguishes work activities performed for the primary benefit of the employer from work activities performed for the primary or personal benefit of the individual, concluding that an individual is not an "employee" under the Act if the individual performs work activities as a component of a vocational training program or for a therapeutic purpose under a service recipient program. The Substantive Policy Statement also includes a legal analysis supporting the Commission's interpretation. The Substantive Policy Statement is published at 13 A.A.R. 1566.

Comment 4: Employers should not have to pay the minimum wage to trainees.

Commission's response: The Minimum Wage Act precludes any wage below minimum wage for employees covered by the Minimum Wage Act, and that includes employees who are in a training or apprentice program.

Comment 5: Fines for employers who retaliate against an employee should be capped, and not allowed to continue until judgment is final.

Commission's response: A.R.S. § 23-364(G) states, "Any employer who retaliates against an employee or other person in violation of this Article shall be required to pay the employee an amount set by the Commission or a court sufficient to compensate the employee and deter future violations, but not less than $150 for each day that the violation continued or until legal judgment is final." The employer can end the fine assessment period by ceasing the retaliatory conduct against the employee. By statute, that is the only way to end the fine assessment period other than by final legal judgment.

Comment 6: Allow the employer to settle the wage complaint without paying the penalty of twice the underpaid wages.

Commission's response: The rules allow the Commission to mediate a wage dispute, which means the parties, recognizing there is a legitimate dispute, may negotiate the amounts to be paid.

Comment 7: Expressed concern that private information of other employees not a part of the investigation would become public, based on the Public Information Act.

Commission's response: Records obtained during the investigation of a minimum wage complaint will be treated the same as other records obtained by the Commission, and private, confidential information will be treated as provided by law.

Comment 8: An employee's identity should not be kept confidential after an administrative complaint is filed.

Commission's response: A.R.S. § 23-364(C) states, in part, "The name of any employee identified in a complaint to the Commission shall be kept confidential as long as possible. Where the Commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent." The statute requires that an employee's name be kept confidential during the investigation of the claim, and this suggestion would require a change in the statute.

Comment 9: No time is given to respond to the Commission's request for payroll records.

Commission's response: R20-5-1209(A) gives the employer 72 hours to gather documents requested by the Commission.

Comment 10: Keeping records for four years is inconsistent with federal requirements of three years.

Commission's response: The recordkeeping requirement is set forth in the statute. To the extent that the statute requires an employer to keep records longer than some federal requirements, it cannot be addressed through the rules.

Comment 11: With regard to reimbursement and rehiring an employee for employer violation – what if the employer is out of business?

Commission's response: If the employer is out of business, then the employee will not be able to be rehired. How back wages would be paid depends on the legal status and solvency of the business. There are no rule changes needed for this comment.

Comment 12: Administrative Law Judge as arbiter is a conflict of interest.

Commission's response: The Administrative Law Judge Division of the Industrial Commission is authorized to resolve disputes arising under the jurisdiction of the Commission. The mere fact that the ALJ Division is a part of the same agency that is charged with investigation and enforcement of minimum wage complaints does not, in and of itself, give rise to a conflict of interest. An actual conflict must be shown before the courts will find a conflict of interest.

Comment 13: The Commission does not have authority to exclude volunteer from the definition of "employee."

Commission's response: A.R.S. § 23-364(A) authorizes the Commission to enforce and implement the Article. As the statute, by its express terms, only applies to employees, the Commission can identify, by rule, those individuals who do not fall into the class of "employees." No rule changes are needed for this comment.

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?

Yes

Notice of Emergency Rulemaking, effective January 25, 2007: 13 A.A.R. 473, February 16, 2007

Notice of Renewal of Emergency Rulemaking, effective July 16, 2007: 13 A.A.R. 2785, August 10, 2007

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

Section

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

A. This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.

B. The Commission shall provide a copy of this Article upon request to any person free of charge.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
4. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
5. "Commission" means monetary compensation based on:
   a. A percentage of total sales,

b. A percentage of sales in excess of a specified amount,
c. A fixed allowance per unit, or
d. Some other formula the employer and employee agrees as a measure of accomplishment.

6. "Complainant" means a person or organization filing an administrative complaint under the Act.
7. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
8. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
9. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
10. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
11. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
12. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
13. "Tip" means a sum a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, are not tips.
14. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
15. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
16. "Workday" means any fixed period of 24 consecutive hours.
17. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

R20-5-1203. Duty to Provide Current Address

A. A complainant shall provide and keep the Labor Department advised of the complainant's current mailing address and telephone number.

B. An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer's current mailing address and telephone number.

R20-5-1204. Forms Prescribed by the Department

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

R20-5-1205. Determination of Employment Relationship

A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:
1. The degree of control the alleged employer exercises over the individual;
2. The individual's opportunity for profit or loss and the individual's investment in the business;
3. The degree of skill required to perform the work;
4. The permanence of the working relationship; and
5. The extent to which the work performed is an integral part of the alleged employer's business.

B. An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.

C. An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

R20-5-1206. Payment of Minimum Wage; Commissions; Tips

A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.

B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall

pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.

C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.

D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.

E. An employer is allowed to:

1. Require or permit employees to pool, share, or split tips, and
2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

R20-5-1207. Tip Credit Toward Minimum Wage

A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.

B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:

1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.

C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

R20-5-1208. Posting Requirements

Every employer subject to the Act shall place a poster prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notice is not removed, altered, defaced, or covered by other material.

R20-5-1209. Records Availability

A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.

B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.

C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

R20-5-1210. General Recordkeeping Requirements

A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.

B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
2. Home address, including zip code;
3. Date of birth, if under 19;
4. Occupation in which employed;
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
7. Hours worked each workday and total hours worked each workweek;
8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
11. Total wages paid each pay period; and
12. Date of payment and the pay period covered by payment.

C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections (B)(1) through (B)(5), (B)(11) and (B)(12) of this Section; and
2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
2. Amount of tips the employee reports to the employer;
3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
6. Copy of the notice required under R20-5-1207(C).

F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

R20-5-1211. Administrative Complaints

A. A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.

B. A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

C. The person or organization filing a complaint with the Labor Department shall sign the complaint.

D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.

E. For good cause, and upon its own complaint, the Department may investigate violations under the Act.

R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

R20-5-1213. Findings and Order Issued by the Department

A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.

B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.

C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:

1. Rehiring or reinstatement;
2. Reimbursement of lost wages and interest;
3. Payment of penalty to employees or affected employees as provided for in the Act and this Article; and
4. Posting of notices to employees.

D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).

E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.

F. The Director of the Department shall sign the written Findings and Order issued by the Department.

G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.

B. A request for hearing shall be in writing and contain:

1. The name and address of the party requesting the hearing;
2. The signature of the party or the party's authorized representative; and
3. A statement that a hearing is requested.

C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.

D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.

E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.

F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.

G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.

H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.

B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:

1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
2. Accident or surprise that could not have been prevented by ordinary prudence;
3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
5. Bias or prejudice of the Department or administrative law judge; and
6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.

C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.

D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.

E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.

F. A decision upon review is final unless a party seeks judicial review as provided in R20-5- 1216.

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served personally or by regular first class mail upon the party affected.

B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

R20-5-1218. Collection of Wages or Penalty Payments Owed

A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.

B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).

C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than $500,000 in gross annual revenue.

B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:

1. State the reasons for the request for relief;
2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
3. Include the signature of the employer or an authorized representative of the employer.

C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.

D. For good cause, the Department may rescind a prior order granting relief under this Section.

E. Relief under this Section is effective upon the Department's written authorization.