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 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

1. Sections Affected **Rulemaking Action**

R7-1-709 Amend

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

Authorizing statutes: A.R.S. §§ 15-1425.1 and 15-1425.6

Implementing statutes: A.R.S. §§ 15-1425.1 and 15-1425.6

3. The effective date of the rules:

October 12, 2001

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 4448, November 24, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4488, December 1, 2000

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

Name: Mary Jo Saiz, Interim Associate Executive Director for Business and Finance

Address: State Board of Directors for Community Colleges of Arizona
2020 N. Central Ave., Suite 570
Phoenix, AZ 85004

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

Establishes guidelines whereby community colleges may provide college level courses to high school students at the high school, during the day. While it is good public policy to move students through the higher education learning process as quickly and cost effectively as possible, guidelines are essential to ensure the quality of instruction and to exclude students who do not meet the minimum requirements for placement in said courses.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting materials:

Joint Legislative Study Committee on Dual Enrollment (Laws 2000, Ch. 136)

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

The rule will not diminish any grant of authority.

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

The amendment will not have any adverse economic impact on small business or consumers.

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

Subsections (1)(a) and (b) were reworded slightly for clarity. The substance of the text remained unchanged. Subsection (2)(b) was modified to increase the 10 percent limitation concerning waiver of the class status requirements pursuant to subsection (2)(a), to 25 percent.

New language was added that requires demonstration by examination, that students entering the program can benefit from college level courses. Requires that any exceptions to this requirement be reported pursuant to subsection (6)(b). Subsection (5) was modified to require the establishment of an advisory committee to evaluate the quality of courses and faculty teaching college level courses at high schools. Subsections (6) and (7) were modified slightly to improve clarity; substance was unchanged.

11. A summary of principal comments and the agency response to them:

Five individuals spoke in support and one opposed to the rule in present form. Refer to minutes of public hearing for complete transcript.

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 the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section
R7-1-709. Community College Classes Offered in Conjunction with High Schools

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-709. Community College Classes Offered in Conjunction with High Schools

~~With the approval of the community college District Governing Board,~~ Upon a determination that it is in the best interest of a district, a community college district governing board may authorize district community colleges to offer college courses that can be counted toward both high school and college graduation requirements ~~may be offered by community colleges in conjunction with high schools for the purpose of offering community college instruction to high school students~~ at the high school during the school day under the following circumstances:

1. The community college District Governing Board and the governing board of the school district or organization of which the high school is a part shall enter into an agreement or contract that shall, at a minimum, address the following issues:
   a. All public high school students enrolled for college credit must be currently enrolled for a full-time instructional program as defined in A.R.S. § 15-901 in addition to the college course or courses except that high school seniors who satisfy high school graduation requirements with less than a full-time instructional program shall be exempt from this provision.
   b. The responsibility of the community college and of the high school for payment for facilities, personnel, and other costs, and the manner in which the college tuition is to be paid by or on behalf of each student, shall be clearly stated.

~~1.~~2. Students shall have been admitted to the community college under the provisions of R7-1-301(C) - Student Admissions~~, and shall satisfy the prerequisites for the course as published in the college catalog~~.
   a. All students enrolled for college credit shall be high school juniors or seniors. All students in the course, including those not electing to enroll for college credit, shall satisfy the prerequisites for the course as published in the college catalog and comply with college policies regarding student placement in courses.
   b. A community college may waive the class status requirements specified in subsection (2)(a), for up to 25 percent of the students enrolled by a college in courses provided under this rule if the community college has established written criteria for waiving the requirements for each course. These criteria shall include a demonstration, by an examination of the specific purposes and requirements of the course, that freshman and sophomore students who meet course prerequisites are prepared to benefit from the college-level course. All such exceptions, and the justification for the exceptions, shall be reported as provided in subsection (6)(b).

~~2.~~3. The courses ~~may be offered at the high school campus provided the courses~~ shall have been evaluated and approved through the official college curriculum approval process pursuant to R7-1-703(D), be at a higher level than taught by the high school, be transferable to an Arizona public university or applicable to an established community college occupational degree or certificate program, and meet all other standards for courses established in R7-1-702. Physical education courses are excluded from this program.

~~3.~~4. ~~Courses shall use~~ ~~c~~College-approved textbooks, syllabuses, course outlines, and grading standards, ~~all of which are~~ applicable to the courses when taught at the community college ~~campus~~ shall apply to the courses, and all students in the courses, when offered under the provisions of this rule. The Chief Executive Officer of each community college shall establish an advisory committee of full-time faculty teaching in the disciplines offered at the community college to assist in course selection and implementation in the high schools and to review and report at least annually to the Chief Executive Officer whether the course goals and standards are understood, the course guidelines are followed, and the same standards of expectation and assessment are applied to these courses as though they were being offered at the community college.

~~4.~~5. Each faculty member shall have a valid community college teaching certificate in the field being taught and shall have been selected and evaluated by the college using the same procedure and criteria that are used at the community college ~~campus~~. The Chief Executive Officer of each community college shall establish an advisory committee of full-time faculty teaching in the disciplines offered at the community college to assist in the selection, orientation, ongoing professional development, and evaluation of faculty teaching college courses in conjunction with the high schools.

~~5.~~6. Each community college district shall annually, by September 1, provide a report to the State Board of community college courses offered in conjunction with high schools during the previous ~~academic~~ fiscal year. In the case of a multi-college district, the multi-college district shall provide a separate report for each college. This report shall ~~list the locations at which the courses were offered, the discipline areas of the courses, and the aggregate student enrollment.~~ include the following:

a. Documentation of compliance with the requirements identified in subsections (3), (4), and 5;

b. The number of students in each course who did not meet the criteria defined in subsection (2)(a);

c. Total enrollments broken down by location, by high school grade level, by course, and by type of program (academic or occupational; and

d. Summary data on performance of students enrolled for college credit in courses offered in conjunction with high schools, including completion rates and grade distribution.

7. Each community college district shall conduct tracking studies of subsequent academic or occupational achievement of students enrolled in courses offered under the provisions of this rule. The report of the results of the first tracking study shall be submitted to the State Board by September 1, 2003 and subsequent reports shall be submitted to the State Board by September 1 of each odd-numbered year thereafter.

a. These tracking studies may involve statistically valid sampling techniques and shall include, at a minimum, the following elements: high school graduation rate, the number of students continuing their studies after graduation at an Arizona community college or public university, the performance of the students in subsequent college courses in the same discipline or occupational field, and the student's grade point average after one year at an Arizona community college or university as compared to the student's college grade point average for courses completed while still in high school.

b. Upon receipt of the report of these studies, the State Board shall convene an ad hoc committee that shall include community college academic officers, faculty, and others expert in the field to review the manner in which these courses are provided. This committee may make recommendations to the State Board, with a copy to each district governing board, regarding desirable changes in this rule or in the manner in which the rule is being implemented.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES

PREAMBLE

1. Sections Affected	Rulemaking Action
Article 5	Amend
R9-14-501	Amend
R9-14-502	Amend
R9-14-503	Amend
R9-14-504	Amend
R9-14-505	Amend

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

Authorizing statutes: A.R.S. §§ 36-136(F) and 36-694

Implementing statutes: A.R.S. §§ 36-470 and 36-694

3. The effective date of the rules:

January 1, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 1322, March 23, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 2694-2702, June 29, 2001

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

Name: Ruthann Smejkal, Ph.D.

Address: Department of Health Services
2927 N. 35th Ave.
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Telephone: (602) 364-1409

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or

Name: Kathleen Phillips, Rules Administrator

Department of Health Services
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Phoenix, AZ 85007

Telephone: (602) 542-1264

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

The rulemaking will amend the heading of Article 5 to add endocrine disorders. R9-14-501 will be amended to clarify the definitions, add new definitions, and delete unnecessary definitions. R9-14-502 will be amended to add congenital adrenal hyperplasia to the list of disorders screened for in the newborn screening test, to make a second screening mandatory, and to make the rule clear, concise, and understandable. R9-14-503 will be amended to make a second screening mandatory and to make the rule clear, concise, and understandable. R9-14-504 will be amended to make it clear, concise, and understandable. R9-14-505 will be amended to increase the fee for second screening from $15.00 to $20.00.

7. A reference to any study that the agency relied on its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable

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:

Costs

The Department will bear 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. Ongoing increased costs include approximately $323,000 due to the addition of congenital adrenal hyperplasia as the disorder to be tested, $127,000 to $150,000 for the additional second screen, and $375,000 in program education, enforcement, and other program costs including the costs for second screening reminders, follow-up for abnormal results, data base modification, and providing verification of newborn screening tests to physicians.

AHCCCS will incur additional costs of approximately $450,000 per year for additional second tests that have not previously been performed and for the increased cost of the second test.

On average, each military health care facility will incur additional costs of approximately $3,500 to $4,000 per year for additional second tests that have not previously been performed, the increased cost of the second test, and staff time to draw, check, and submit the specimen for a second test. The cost for each individual facility may vary.

On average, each Indian Health Services facility and tribal health facility will incur additional costs of approximately $800 to $900 for additional second tests that have not previously been performed, the increased cost of the second test, and staff time to draw, check, and submit the specimen for a second test. Some of the costs may be reimbursed through AHCCCS. The cost for each individual facility may vary.

Hospitals perform relatively few second screens, as most newborns are discharged prior to the time second screens are to be performed. Each hospital, on average, will incur minimal to moderate costs per year for staff time to draw, check, and submit the specimen for a second test. Most of the costs incurred by the hospitals is reimbursed through AHCCCS, other third-party payors, or patients. The cost for each individual hospital may vary.

Third-party payors (primarily insurance companies, including HMOs and PPOs), as a whole, will incur additional costs of approximately $450,000 per year for additional second tests that have not previously been performed and for the increased cost of the second test. The costs are offset by the premium charged to the insured. The cost for each individual payor may vary.

As a whole, intermediary laboratories contracted by AHCCCS and other third-party payors which may collect and submit newborn screening specimens for testing will incur additional costs of approximately $575,000 per year, most or all of which is reimbursed through AHCCCS or other third-party payors. The cost for each individual laboratory may vary.

On average, each clinical outpatient facility, including a community health center, will incur additional costs of approximately $1,000 to $1,500 per year for staff time to draw and submit the specimen, and verify second screens of patients. Most of the costs is reimbursed through AHCCCS, other third-party payors, or patients. The cost for each individual facility may vary.

On average, each physician will incur additional costs of approximately $2,000 to $2,500 per year for staff time to draw and submit the specimen, and verify second screens of patients. Most of the cost is reimbursed through AHCCCS, other third-party payors, or patients. The cost for each physician's office may vary.

The parents of newborns who are not covered by AHCCCS or insurance will incur an additional costs of $5 to $100 for screening fees, travel, and time off work.

Each individual who pays premiums to third-party payor may incur additional minimal costs in increased premiums.

Benefits
The Department will collect additional fees of approximately $825,000 for the newborn screening fund.

AHCCCS, other third-party payors, military health care facilities, Indian Health Services and tribal health care facilities will benefit because of decreased costs of diagnostic testing when symptoms develop and decreased costs of hospitalization, other treatment, and long-term care over the lifetime of a child for undiagnosed or late-diagnosed disorders. The exact amount saved by the early diagnosis of a child who has one of the disorders screened by the newborn screening test cannot be determined because there are so many variables. However, the cost of treatment and care over the lifetime of just one severely affected child could surpass one million dollars.

Physicians and clinical outpatient facilities will benefit because of decreased costs associated with the process of diagnosing a disorder once symptoms occur.

Parents of newborns will benefit by having healthy children and fewer catastrophic medical bills. As an example, it may cost an additional $8,000 per year to prepare a special diet for a child with Phenylketonuria (PKU). However, a child institutionalized because of undiagnosed or late-diagnosed PKU may cost $8,000 per month.

Society in general will receive the substantial benefit of having a healthy and productive member of society because of timely identification and treatment of the disorders. There were approximately 85,000 children born in Arizona in the year 2000, and it is estimated that the number of births is increasing by 4,000 to 5,000 per year. It is estimated that an additional seven or eight children that will be identified as having congenital hypothyroidism with the mandatory second screen. These children can be treated and live normal, healthy lives. If the disorder is not caught early, the child will be significantly mentally retarded and have other physical problems. Untreated children may need to be institutionalized due to severe mental retardation and physical impairments.

There are several reasons for requiring a second newborn screening test. The optimum timing for the first screen is between 48 and 72 hours of life. Few newborns remain in the hospital that long. Many newborns have the first screen prior to 24 hours of life, just prior to discharge. Some metabolic conditions, such as Phenylketonuria (PKU), may not be detected if the blood for the newborn screen is taken soon after birth. This may lead to a false negative on the first screen. In addition, a normal hormonal surge immediately after birth may lead to false positive results for two disorders. A routine prompt second screen is necessary to detect true positive results in time to prevent tragic consequences, and to determine false positive results without unnecessarily causing distress to families. A second screen can also validate the results of the first screen. It is also a second chance to detect a disorder, decreasing the possibil-

ity that a newborn would be missed due to delayed-onset of the disorder or due to an unsatisfactory, lost, or not done first screen.

Society in general, the families of children with congenital adrenal hyperplasia, and the children themselves will benefit from adding this disorder to the screening panel. Through the screening test, fewer children will die of the disease or have incorrect gender assignment.

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

The Department has made several grammatical, stylistic, and verbiage changes on the suggestions of the Governor's Regulatory Review Council staff to make the rules more clear, concise, and understandable. The Department has not made any substantive change in the text of the final rules from that in the proposed rules.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any written or oral comments.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES

ARTICLE 5. TESTS FOR ENDOCRINE DISORDERS, METABOLIC DISORDERS, AND HEMOGLOBINOPATHIES

Section
R9-14-501. Definitions
R9-14-502. Testing of ~~newborns~~ Newborns
R9-14-503. Persons ~~and health care facilities responsible for tests~~ Responsible for Tests
R9-14-504. Parent or ~~guardian education~~ Guardian Education
R9-14-505. Screening ~~fees; collection~~ Fees

ARTICLE 5. TESTS FOR ENDOCRINE DISORDERS, METABOLIC DISORDERS, AND HEMOGLOBINOPATHIES

R9-14-501. Definitions

In this Article, unless ~~context~~ otherwise ~~requires~~ specified:

1. "Administrator" means an individual in charge of the onsite management of a health care facility.
2. "Abnormal" means a result of an analysis performed as part of a newborn screening test that deviates from the range of values established by the Department.
3. "Admitted" means a written acceptance of a newborn by a health care facility.
4. "AHCCCS" means the Arizona Health Care Cost Containment System.

~~1.~~5. "Biotinidase deficiency" means a congenital metabolic disorder characterized by ~~abnormal biotinidase production which causes mental retardation if not treated early in life~~ defective biotinidase activity that causes abnormal biotin metabolism.

6. "Birth center" means a health care facility that is not a hospital, that is organized for the sole purpose of delivering newborns.
7. "Classic galactosemia" means a congenital metabolic disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridyltranferase activity.

~~2.~~8. "Committee" means the newborn screening program committee ~~appointed by the Director~~ specified in A.R.S. § 36-694.

9. "Congenital adrenal hyperplasia" means an endocrine disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.

~~3.~~10. "Congenital hypothyroidism" means ~~a metabolic~~ an endocrine disorder characterized by ~~a deficiency of~~ deficient thyroid hormone ~~(thyroxin)~~ production ~~which causes mental and physical retardation if not treated early in life~~.

~~4.~~11. "Department" means the Arizona Department of Health Services.

~~5.~~12. "Director" means the Director of the Department of Health Services.
13. "Discharge" means the release of a patient from medical care by a health care facility.
14. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
15. "Document" means to establish and maintain information in written, photographic, electronic, or other form.
16. "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical, or electromagnetic capabilities or similar capabilities.
17. "First specimen" means the initial satisfactory specimen on which the newborn screening laboratory performs an analysis to detect a disorder listed in R9-14-502(A).
18. "Guardian" means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
~~6. "Galactosemia" means a congenital metabolic disorder characterized by abnormal galactose metabolism which causes mental retardation or death of not treated early in life.~~
~~7.~~19. "Health care facility" means ~~any establishment, public or private, that provides facilities for~~ a health care institution defined in A.R.S. § 36-401 where obstetrical care ~~and care to a~~ or newborn care is provided.
~~8.~~20. "Health care provider" means ~~the~~ a physician, physician assistant, or registered nurse practitioner, or ~~licensed~~ midwife ~~caring for the newborn after delivery~~.
21. "Health-related services" means the same as in A.R.S. § 36-401.
~~9.~~22. ~~"Hemoglobinopathies" mean a group of inherited diseases characterized by an~~ "Hemoglobinopathy" means any inherited abnormality in the production, structure, ~~and~~ or function of hemoglobin.
23. "Home birth" means delivery of a newborn, outside a health care facility, for which the newborn is not hospitalized within 72 hours of delivery.
~~10.~~24. "Homocystinuria" means a congenital metabolic disorder characterized by abnormal methionine and homocysteine metabolism ~~which causes mental retardation if not treated early in life~~ due to defective cystathione-ß-synthase activity.
25. "Hospital" means a health care institution that provides hospital services for the diagnosis and treatment of patients.
26. "Identification code" means an account number assigned by the newborn screening laboratory.
~~11. "Initial screen" means laboratory procedures performed on the first acceptable specimen of blood to detect the presence of metabolic disorder and/or a hemoglobinopathy.~~
~~12.~~27. "Maple syrup urine disease" ~~or "M.S.U.D."~~ means a congenital metabolic disorder of ~~branch~~ branched chain amino acid metabolism ~~which causes mental retardation or death if not treated early in life~~ due to defective branched chain-keto acid dehydrogenase activity.
28. "Medical services" means the same as in A.R.S. § 36-401.
29. "Midwife" means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7 or certified under A.R.S. Title 32, Chapter 15.
~~13.~~30. "Newborn" means ~~an infant 30~~ a human from birth through 28 days of age ~~and under~~ for whom a certificate of live birth is required ~~by A.R.S. § 36-322~~ to be filed ~~with the Department~~ under A.R.S. § 36-322.
31. "Newborn care" means medical services, nursing services, and health-related services provided to a newborn.
~~14.~~32. "Newborn screening laboratory" means ~~a laboratory with which the Department contracts to conduct testing of the newborn screening specimens~~ an entity contracted with the Department under A.R.S. § 36-694(C) to perform the newborn screening test.
~~15. "Newborn Screening Program" means the administrative and coordination program of the Department, the newborn screening laboratory, and the follow-up services provided by designated clinical service providers.~~
~~16.~~33. "Newborn ~~Screening Tests~~ screening test" means multiple laboratory ~~procedures~~ analyses performed on a ~~sample of blood~~ first specimen and a second specimen to detect the presence of endocrine disorders, metabolic disorders, or hemoglobinopathies ~~as stated~~ listed in ~~R9-14-502~~ R9-14-502(A).
34. "Nursing services" means the same as in A.R.S. § 36-401.
35. "Obstetrical care" means the medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
36. "Parent" means a natural, adoptive, or custodial mother or father of a newborn.
37. "Person" means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
~~17.~~38. "Phenylketonuria" ~~or "P.K.U."~~ means a congenital metabolic disorder characterized by abnormal phenylalanine metabolism ~~which causes mental retardation if not treated early in life~~ due to defective phenylalanine hydroxylase activity.
39. "Physician" means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
40. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25.
41. "Registered nurse practitioner" means the same as in A.R.S. § 32-1601.
~~18. "Repeat test" means laboratory procedures to verify only an abnormal result reported on the initial or second screen and performed on a specimen of blood.~~

42. "Satisfactory specimen" means a specimen collection kit, on which demographic information has been written and blood applied to the filter paper of that specimen collection kit, that meets the newborn screening test requirements.
~~19.~~43. "Second ~~screen~~ specimen" means ~~laboratory procedures performed on a second specimen of blood if the initial specimen was collected within 24 hours of birth~~ a satisfactory specimen collected after a first specimen, on which the newborn screening laboratory performs analyses to detect the presence of all of the disorders listed in R9-14-502(A).
~~20.~~44. "Sickle cell ~~diseases~~ disease" ~~mean a group of hemoglobinopathies~~ means a hemoglobinopathy characterized by the distortion of the red blood cells ~~which may lead to septicemia or death in infancy if not adequately treated~~.
45. "Specimen" means capillary or venous blood, but not cord blood, applied to the filter paper of the specimen collection kit.
~~21.~~46. "Specimen collection kit" means a form supplied by the Department for obtaining information specified in R9-14-502(C), with an attached strip of filter paper for collecting a specimen ~~kit that is either licensed or approved by the Food and Drug Administration and has been approved by the newborn screening laboratory~~.
47. "Test" means a laboratory analysis performed on body fluid, tissue, or excretion to determine the presence or absence of a disorder.
~~22. "To order" means to direct appropriate personnel to obtain specimens and send them for laboratory tests.~~
48. "Transfer" means discharging and relocating a newborn from a health care facility to another health care facility.
49. "Transfusion" means the infusion of blood or blood products into the body of an individual.
~~23.~~50. "Unsatisfactory specimen" means ~~any~~ a specimen collection kit, on which demographic information has been written and blood ~~sample~~ applied to the filter paper of that specimen collection kit that is rejected by the ~~Newborn Screening Laboratory, prior to testing, that could provide unreliable, misleading, or clinically inaccurate results~~ newborn screening laboratory for any of the reasons specified in R9-14-502(B).
51. "Verify" means to obtain information through sources that include the newborn screening program, a health care provider, a health care facility, or a documented record.
~~24.~~52. "Working day" means 8:00 a.m. ~~to~~ through 5:00 p.m. Monday through Friday, excluding state holidays.

R9-14-502. Testing of ~~newborns~~ Newborns

A. ~~The attending physician or other person required to make a report on the birth of a newborn born in Arizona shall order or cause to be ordered the following tests for metabolic disorders and hemoglobinopathies: phenylketonuria, galactosemia, congenital hypothyroidism, biotinidase deficiency, homocystinuria, maple syrup urine disease, sickle cell disease and other hemoglobinopathies. If a parent or guardian refuses the newborn screening tests, such refusal shall be documented in writing and shall be part of the newborn's medical record with a copy sent to the Newborn Screening Program.~~
A newborn screening test shall screen for the presence of the following disorders:
1. Biotinidase deficiency;
2. Classic galactosemia;
3. Congenital adrenal hyperplasia;
4. Congenital hypothyroidism;
5. Hemoglobinopathy;
6. Homocystinuria,
7. Maple syrup urine disease; and
8. Phenylketonuria.

B. ~~If the initial screening sample was collected within 24 hours of birth, the responsible person shall inform the newborn's parents or guardian that a second screen for metabolic disorders shall be performed between 3 and 7 days of age.~~
A health care facility's designee, a health care provider, or the health care provider's designee shall:
1. Collect a satisfactory specimen;
2. Complete the information on the specimen collection kit; and
3. Submit the specimen collection kit to the newborn screening laboratory no later than 24 hours, or the next working day, after the specimen is collected.

C. ~~The specimens for testing shall be sent, no later than 24 hours or the next working day after being obtained, to the newborn screening laboratory.~~
A health care facility's designee, a health care provider, or the health care provider's designee shall provide the following information on the specimen collection kit provided by the Department:
1. The newborn's name, gender, ethnicity, medical record number, and if applicable, AHCCCS identification number;
2. The newborn's type of food;
3. Whether the newborn is a single or multiple birth;
4. Whether the newborn has a medical condition that may affect the newborn screening test results;
5. Whether the newborn received antibiotics or a blood transfusion and, if applicable, the date of the last blood transfusion;
6. The method of specimen collection;
7. The date and time of birth and newborn's weight at birth;
8. The date and time of specimen collection and the newborn's weight when the specimen is collected;

9. The name and identification code of the person submitting the specimen;
10. The name, identification code, and address of the newborn's health care provider;
11. The mother's name, date of birth, address, and if applicable, AHCCCS identification number; and
12. Whether the parent or guardian refused the newborn screening test.

D. ~~The results from all abnormal newborn tests for metabolic and/or hemoglobin disorders shall be reported to the Newborn Screening Program, which shall notify the health care provider.~~
If a parent or guardian refuses the newborn screening test, a health care facility's designee, a health care provider, or the health care provider's designee shall:
1. Document the refusal in the newborn's medical record; and
2. Submit the specimen collection kit, with the form completed, to the newborn screening laboratory no later than 24 hours or the next working day after the form is completed.

E. ~~The results from any confirmatory testing, ordered in response to an abnormal newborn screen, shall be reported to the Newborn Screening Program.~~
A health care facility's designee, a health care provider, or the health care provider's designee shall collect a first specimen according to whichever of the following occurs first:
1. A newborn is 48 to 72 hours old;
2. Before and proximate to a newborn's discharge time; or
3. Before a transfusion, unless specified otherwise by a physician, physician assistant, or registered nurse practitioner.

F. A birth center is exempt from the requirement in R9-14-502(E)(2) to collect a first specimen before and proximate to a newborn's discharge time.

G. After a first specimen is collected, a health care facility's designee, a health care provider, or the health care provider's designee shall collect a second specimen according to whichever of the following occurs first:
1. If a home birth attended by a health care provider, when the newborn is seven through 14 days old;
2. If a newborn is in a health care facility, when the newborn is seven through 14 days old; or
3. At the time of a newborn's first visit to a health care provider after discharge.

H. Before a newborn is discharged, a health care facility's designee, a health care provider, or the health care provider's designee shall inform the newborn's parent or guardian of the requirement for a second specimen if the second specimen has not been collected.

I. If a health care facility's designee, a health care provider, or the health care provider's designee cannot verify that a first specimen has been collected on an individual who is one-year old or less, the health care provider or the health care provider's designee shall collect a specimen and submit the specimen to the newborn screening laboratory.

J. A specimen is unsatisfactory for the newborn screening test if:
1. There is an insufficient quantity of blood to complete the newborn screening test;
2. The blood is clotted or layered;
3. The blood has serum rings;
4. The blood is diluted or discolored;
5. The blood will not elute from the filter paper;
6. The blood has been applied to both sides of the filter paper;
7. The blood or the filter paper is contaminated;
8. The filter paper is scratched or abraded; or
9. The specimen is received by the newborn screening laboratory 14 days or more after the specimen is collected.

K. The newborn screening laboratory shall report results from all newborn screening tests:
1. In writing, to the person submitting the specimen and the health care provider identified on the specimen collection kit, and
2. To the Department.

L. A health care facility's designee, a health care provider, or the health care provider's designee who orders a test, shall send the results in writing to the Department, if the test is:
1. Performed by a laboratory other than the newborn screening laboratory, and
2. In response to an abnormal newborn screening test.

M. Newborn screening test results are confidential subject to the disclosure provisions of A.A.C. Title 9, Chapter 1, Article 3.

R9-14-503. Persons ~~and health care facilities responsible for tests~~ Responsible for Tests

A. ~~Births occurring in a health care facility.~~
1. ~~The health care provider shall order the tests or shall ensure that the tests are ordered.~~
2. ~~The administrator in charge of the health care facility or the administrator's designee shall ensure that specimens are collected on all newborns born or transferred to that health care facility. The newborn's medical record shall indicate that the tests were ordered or that the parent or guardian refused the test.~~
3. ~~The specimens for these tests shall be obtained when the newborn is three days of age or immediately prior to the time of discharge from the health care facility, whichever is earlier.~~

~~4. The specimen shall be capillary or venous blood and shall be collected utilizing a specimen collection kit obtained from the newborn screening laboratory. Cord blood shall not be accepted.~~
~~5. The person in charge of the health care facility or the designated representative shall ensure that all information requested on the form within the specimen collection kit.~~
~~6. If the newborn is transferred to another health care facility before 3 days of age, the receiving health care facility shall be responsible for obtaining the specimen for newborn screening.~~
~~7. If the initial screening specimen for any newborn was collected within 24 hours of birth, the health care facility and the health care provider shall inform the newborn's parents that a second screen is required at 3 to 7 days of age.~~

An administrator shall ensure that a first specimen is collected from each newborn born at the health care facility unless the newborn is transferred before the newborn is three days old or the newborn dies before the specimen is collected.

B. ~~Births occurring outside a health care facility.~~
~~1. The health care provider shall order the tests or shall ensure that the tests are ordered.~~
~~2. If the initial screening sample for any newborn was collected within 24 hours of birth the health care provider shall notify the newborn's parents that a second screen is required between 3 and 7 days of age.~~
~~3. If the birth is not attended by a health care provider with the authority to order the test, the person required by A.R.S. § 36-322(E)(3) or (4) to report the birth shall notify the local or state registrar when the certificate of live birth is filed. The registrar shall notify the health officer in the county where the newborn's parents are expected to reside. The health officer shall ensure collection of a specimen within three days from the time of notification of the birth.~~
~~4. The specimen shall be capillary or venous blood and shall be collected utilizing a specimen collection kit obtained from the newborn screening laboratory. Cord blood shall not be accepted.~~

If a newborn is admitted to a health care facility or transferred to another health care facility, the administrator of the receiving facility shall verify that the first specimen has been collected before admission or transfer. If the administrator cannot verify that the first specimen has been collected, the administrator shall ensure that a health care provider or the health care provider's designee collects the specimen.

C. Unless an administrator can verify that a second specimen has been collected from a newborn who is seven to 14 days old, the administrator shall ensure that a second specimen is collected from a newborn who is:
1. Not discharged;
2. Admitted to the health care facility; or
3. Transferred to the health care facility.

D. If a specimen is collected, the administrator shall ensure that all the information requested on the specimen collection kit is completed.

E. If a home birth is attended by a health care provider, the health care provider or health care provider's designee shall:
1. Collect the first specimen from the newborn;
2. Complete the information requested on the specimen collection kit; and
3. Submit the specimen collection kit to the newborn screening laboratory within 24 hours after the specimen is collected.

F. If a home birth is not attended by a health care provider and a local or state registrar of vital statistics is notified under A.R.S. § 36-322(D), the local or state registrar shall inform the health officer of the county identified by the address of the newborn's parent or guardian of the birth.

R9-14-504. Parent or ~~guardian education~~ Guardian Education

A. ~~The health care provider shall inform the newborn's parent or guardian of the reasons for the tests.~~
The Department shall provide written educational materials about the newborn screening test to a health care facility or health care provider upon request.

B. ~~The health care facility shall be responsible for distributing written educational materials on newborn screening provided by the Department.~~
An administrator shall ensure that the educational materials provided by the Department are given to a newborn's parent or guardian before the newborn is discharged.

C. For a home birth, a health care provider or health care provider's designee shall give the educational materials provided by the Department to a newborn's parent or guardian before a first specimen is collected.

D. A health care provider or health care provider's designee shall explain the purpose for the newborn screening test, as stated in the educational materials, to a newborn's parent or guardian before a specimen is collected.

Editor's Note: The following Section did not contain a label for subsection (A), but the Office of the Secretary of State assumes it existed and was erroneously deleted at some point in the past.

R9-14-505. Screening ~~fees; collection~~ Fees

~~The following fees shall be charged for newborn screening:~~
~~1. The fee shall be 20.00 dollars for an initial screen.~~

~~2. The fee shall be 15.00 dollars for a second screen.~~

~~**B.** There shall be no fee charged for a repeat test or for an unsatisfactory specimen.~~

A person who submits a specimen to the newborn screening laboratory shall pay $20.00 for each specimen analyzed for all the disorders listed in R9-14-502(A).

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER D. CORPORATIONS

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R15-2D-101	Amend
R15-2D-401	Amend
R15-2D-403	Amend
R15-2D-404	Amend
R15-2D-405	Amend
R15-2D-501	Amend
R15-2D-502	Amend
R15-2D-503	Amend
R15-2D-504	Amend
R15-2D-505	Amend
R15-2D-506	Amend
R15-2D-507	Amend
R15-2D-508	Amend
R15-2D-601	Amend
R15-2D-602	Amend
R15-2D-603	Amend
R15-2D-604	Amend
R15-2D-605	Amend
R15-2D-606	Amend
R15-2D-607	Amend
R15-2D-701	Amend
R15-2D-702	Amend
R15-2D-703	Amend
R15-2D-704	Amend
R15-2D-705	Amend
R15-2D-801	Amend
R15-2D-803	Amend
R15-2D-804	Amend
R15-2D-805	Amend
R15-2D-806	Amend
R15-2D-807	Amend
R15-2D-901	Amend
R15-2D-902	Amend
R15-2D-903	Amend

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

Authorizing statute: A.R.S. § 42-1005

Implementing statutes: A.R.S. §§ 43-941, 43-942, 43-947, 43-1131 through 43-1150

3. The effective date of the rules:

October 5, 2001

4. List of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 6 A.A.R. 3118, August 18, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4552, December 8, 2000

Notice of Public Hearing on Proposed Rulemaking: 7 A.A.R. 981, February 23, 2001

Notice of Public Information: 7 A.A.R. 1044, March 2, 2001

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

Name: Patricia Trent

Address: Tax Research and Analysis Section
Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

E-mail Trentp@revenue.state.az.us

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

These rules deal with the division of income by multistate businesses for corporate income tax purposes. As a result of legislative changes and the five-year review of 15 A.A.C. 2, the Department is proposing to amend the rules to conform to current statutes, remove language that is obsolete or that is repetitive of statute, rearrange the rules in a more logical manner, and conform to current rulemaking guidelines.

In addition, R15-2D-403 and a substantial portion of the rules in Articles 5 through 9 were originally taken from uniform regulations prepared by the Multi-State Tax Commission (MTC). The MTC was the originator of the Uniform Division of Income for Tax Purposes Act (UDITPA). MTC designed the regulations so that any UDITPA state could adopt the proposal with minimal change. A.R.S. § 43-1149 requires that UDITPA be construed to effectuate its general purpose to make uniform the law of those states that enact it. The majority of the changes to R15-2D-403 and the rules in Articles 5 through 9 are to conform the rules to the current MTC regulations and to add MTC examples that were not included in the rules when they were originally adopted by the Department in 1986. Due to A.R.S. § 43-1149 and in order to avoid confusion, the Department is keeping changes to the language that was taken from the MTC to a minimum.

7. Reference to any study that the agency proposes to rely on and its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current statute and rulemaking guidelines, removing language that is obsolete or that is repetitive of statute, and rearranging the rules in a more logical manner, which will make the rules more accurate as well as clearer and easier to understand. In addition, the MTC examples will provide additional guidance for taxpayers and will help to ensure that whenever possible Arizona's method for apportioning or allocating multistate income will be similar to that used by other states that have adopted UDITPA. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

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

At the recommendation of the staff of the Governor's Regulatory Review Council and in response to public comment, the Department made various grammatical and other nonsubstantive changes. The Department eliminated the term "extra cash" in Example 5 of R15-2D-504. The Department clarified R15-2D-902 to require an alternate method for determining the value of rented property if the normal subrent computation produces a negative or inaccurate value. The Department also added a definition of "incidental to" in R15-2D-101. The Department believes that these changes are not substantial.

11. A summary of the principal comments and the agency response to them:

The Department received written comments from J. Hugh McKinnon of General Motors Corporation. A public hearing was held on April 4, 2001. Mr. McKinnon and Michael Galloway, of the law firm Quarles & Brady Streich Lang, attended the public hearing. At the public hearing, Mr. McKinnon summarized his written comments. The following are comments from Mr. McKinnon and the Department's response to those comments:

Comment 1: The Department should consider recent cases addressing the distinction between business and nonbusiness income.

Response: The Department has considered recent cases addressing the distinction between business and nonbusiness income.

The cases address a variety of business/nonbusiness issues with specific and, possibly, unique fact patterns. Under A.R.S. § 41-1001(17), the definition of a "rule" is an "agency statement of *general* applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." (Emphasis added.) The proposed rules, including the examples, are written to be of general applicability. The rules cannot address every conceivable transaction or circumstance that taxpayers may encounter.

At this time, the Department does not agree to change the proposed rules based on recent cases. However, as discussed below in response to the comment on "extraordinary" income, the Department will consider amending the rules or adding new rules if it is determined that certain transactions, such as pension reversions, are occurring with a level of frequency that would require a rule.

Comment 2: The proposed rules appear to impose a business income definition that is broader than the constitutional law concept of unitary income.

Response: The Department does not believe that the proposed rules impose a business income definition that is broader than the constitutional concept of unitary income. The rules addressing the specific types of income (rents, gains and losses on the sale of assets, interest, dividends, and royalties) all classify, as business income, those items that are related or incidental to the taxpayer's trade or business. Items of income not related or incidental to the taxpayer's trade or business are treated as nonbusiness income. This treatment is consistent with the constitutional concept of unitary income. As stated in *Allied-Signal* v. *Director, Division of Taxation*, 504 US 768 (1992), "the constitutional question becomes whether the income derives from unrelated business activity which constitutes a discrete business enterprise." (Citation omitted.) The Department believes that the proposed rules properly classify income from "unrelated business activity" as nonbusiness income.

Comment 3: The proposed rules appear to adopt an excessively broad definition of business income by stating that business income includes items of income that are "related to or incidental to" the taxpayer's regular trade or business operations. This excessively broad definition is contrary to the statute. The rules also excessively favor the categorization of income as business income.

Response: The Department does not believe that the proposed rules adopt an overly broad definition of business income. The statutory definition of business income is as follows:

"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

A.R.S. § 43-1131(1). The "related to or incidental to" language used in the proposed rules is consistent with this definition. Income that is "related to" the taxpayer's trade or business clearly falls within "income arising from transactions and activity in the regular course of the taxpayer's trade or business." Similarly, income that is "incidental to" the taxpayer's trade or business is consistent with the definition of business income. Subsequent to receiving this comment, the Department added a definition of "incidental to" in R15-2D-101. See below for a discussion of the revised definition of "incidental to."

Proposed R15-2D-501 provides that "for purposes of administration, the income of a taxpayer is business income unless clearly classifiable as nonbusiness income." The Department does not believe that this presumption results in an excessive favoring of income as business income. It simply requires that the taxpayer (or the Department) establish the facts and circumstances that show the income is not business income.

Comment 4: In example three of R15-2D-502, the rental of the two floors is incidental to the taxpayer's main business and, therefore, the rental income should be classified as nonbusiness income.

Response: The Department does not agree. Subsequent to receiving this comment, the Department added a definition of "incidental to" in R15-2D-101, which states that "incidental to" means occurring in, or associated with, the normal, typical, or customary operations of the particular trade or business under consideration." The rental of two out of five floors would normally occur in connection with a taxpayer's trade or business that uses the other three floors. This is

in contrast to the rental of 18 out of 20 floors, which would not normally occur in connection with a taxpayer's trade or business that uses the other two floors. (See example 5 in R15-2D-502.)

Comment 5: In examples 6 and 7 of R15-2D-502, there is no principled distinction in the classification of the income as business income (example 6) or nonbusiness income (example 7). The income in both cases should be classified as nonbusiness income. If the Department does not agree that the result in both cases is nonbusiness income, then the time limits should be narrowed.

Response: The Department believes that the time-frames of 18 months and five years are proper guides for purposes of classifying income as business or nonbusiness income. The examples are consistent with proposed R15-2D-602, related to the property factor, which requires property to remain in the property factor until its permanent withdrawal is established by an identifiable event. An 18-month lease does not indicate a permanent withdrawal. The 18-month and five-year time-frames used in the examples are guidelines to aid in the classification of business or nonbusiness income. There are facts and circumstances in which property could be converted to nonbusiness property sooner than five years. Consider the case of *Appeal of Nicholas Turkey Breeding Farms, Inc.*, California State Board of Equalization, 87-SBE-038, 5/7/87. In that case, the property was unusable by the taxpayer, a turkey breeder, due to an ineradicable disease affecting the turkeys.

Comment 6: Regarding R15-2D-503, the introductory language focusing on whether the property was used in the production of nonbusiness income has no basis in the Arizona statute or UDITPA. The Arizona statute and UDITPA focus on whether the income is produced in the regular course of the trade or business of the taxpayer.

Response: The Department believes that the language is consistent with the definition of business income. Income from property not used in the taxpayer's trade or business is not income "arising from transactions and activity in the regular course of the taxpayer's trade or business" and is, therefore, properly classified as nonbusiness income.

Comment 7: Regarding R15-2D-503, there is no rational basis for classifying the income in example two as business income and the income in example five as nonbusiness income.

Response: As discussed in the response to comment five, the Department does not agree that the time-frame guidelines of 18 months and five years are improper.

Comment 8: Regarding R15-2D-503, the better way to determine the business income from the sale of depreciable assets is to treat, as business income, any recapture of depreciation that was deducted from the business. Any additional gain should be treated as nonbusiness income.

Response: The Department does not agree. Since adopting the UDITPA rules in 1986, the Department has treated the gain (or loss) on the sale of property used in the taxpayer's trade or business as business income, unless the property is removed from the property factor under R15-2D-602 (formerly, R15-2-1140). If a taxpayer believes, due to the taxpayer's particular facts and circumstances, that apportioning the total gain on the sale of business property does not fairly represent the extent of the taxpayer's business activity in Arizona, the taxpayer may petition the Department under A.R.S. § 43-1148 to use an alternative method.

Comment 9: Regarding R15-2D-503, the proposed rule fails to address gains from the sale of a division or distinct business line. The proposed rule also fails to address the gain on the sale of assets as the result of complete cessation of the business. There is a broad line of cases that indicate that if a taxpayer quits a line of business, the gain on the sale of the discontinued line is classified as nonbusiness income.

Response: As previously indicated, the rules are of general applicability and cannot address every circumstance. However, the Department does not agree that the gain or loss on the sale of a division or distinct business line and the gain or loss on the cessation of a business is nonbusiness income. The Department's position is consistent with another line of cases that recognize the "functional test" for determining business income. See, for example, *Texaco-Cities Serv. Pipeline Co.* v. *McGaw*, 182 Ill. 2d 262, 695 N.E.2d 481 (1998).

Comment 10: Regarding R15-2D-503, the proposed rule fails to address the sale of a minority interest in an enterprise, either as a stock investment or partnership investment. The gain on the sale of a minority interest should be treated as nonbusiness income.

Response: The rules are of general applicability and do not address every circumstance. However, the Department does not agree that the sale of a minority investment always results in nonbusiness income. As discussed in the Hellerstein treatise, in certain circumstances the gain or loss on the sale of a minority investment is business income. Under the *Corn Products* doctrine, "gain or loss from the sale of intangible assets - frequently stock in other corpora-

tions - was held to be ordinary gain or loss because the asset was 'bought and kept not for investment purposes, but only as an incident to the conduct of the taxpayer's business.'" Hellerstein, *State Taxation*, third edition, 9.10(1)(C) (2000) (footnotes omitted).

Comment 11: Regarding example five of R15-2D-504, it is generally accepted that the interest from working capital is business income, but the reference to "extra cash" is misplaced.

Response: The Department agrees that the reference to "extra cash" is misplaced. Therefore, the Department deleted the term "extra cash."

Comment 12: Regarding examples five and six of R15-2D-504, there is a suggestion that the interest bearing account must be separate for the income from the account to be considered nonbusiness income.

Response: The Department does not agree that examples five and six suggest that the interest bearing account must be separate for the income from the account to be considered nonbusiness income.

Comment 13: Regarding examples three and five of R15-2D-505, both examples fail to focus on the critical issue of whether there is a unitary relationship between the taxpayer and the corporation in which the taxpayer owns stock. As previously noted, the proposed rules recognize that unless the taxpayer owns or controls more than 50 percent of the underlying stock, there is no unitary link. Dividends from a non-unitary business should be classified as nonbusiness income.

Response: As noted in the response to Comment 10, the taxpayer and the corporation paying the dividend need not be part of the same unitary business in order for the investment to generate business income. In addition, the Hellerstein treatise specifically approves of the results in the same examples under the MTC regulations. See, Hellerstein, 9.10(1)(A).

Comment 14: Regarding R15-2D-506, the introductory language creates a broad sweep for business income classifications. At a minimum, it would be appropriate to recognize that some royalties, such as oil and gas royalties that arise from the ownership of real property held for other purposes, should be classified as nonbusiness income.

Response: The Department does not believe that incidental oil and gas royalties from property acquired for use in the taxpayer's trade or business should be classified as nonbusiness income. With respect to the example of a timber company receiving oil and gas royalties, the royalties would not be business income if the timber company acquired oil and gas property that had no standing timber or was unsuitable for growing timber.

Comment 15: The proposed rules do not address extraordinary income items. At a minimum, the rules should raise the presumption that extraordinary income items are nonbusiness income.

Response: At this time, the Department does not believe that the types of "extraordinary" income Mr. McKinnon mentions are occurring with such a frequency as to require changing the proposed rules or adding a new rule. However, the Department will consider amending the rules or adding new rules if it is determined that certain transactions, such as pension reversions, are occurring with a level of frequency that would require a rule. The Department notes that the *Hoechst Celanese* decision cited by Mr. McKinnon has been reversed by the California Supreme Court subsequent to the submission of the comment. (See, *Hoechst Celanese Corporation* v. *Franchise Tax Board*, S085091, 5/14/2001.)

Comment 16: Regarding R15-2D-508, whether a taxpayer reports uniformly to other UDITPA states is not relevant to Arizona. The rule should be deleted in its entirety.

Response: The Department does not agree that the business/nonbusiness income treatment in another state is not relevant to Arizona. It is particularly relevant when the other state's UDITPA statute and regulations are similar to those in Arizona. The Department does not agree to delete the rule in its entirety.

Mr. Galloway made the following comment:

Comment: Regarding R15-2D-401(G), the 20 percent amount is given more weight than it ought to have in determining the existence of a unitary business.

Response: The Department does not believe that the 20 percent amount is given more weight than it ought to have. This amount creates only the presumption that a unitary business exists. The taxpayer or the Department may produce evidence to overcome the presumption.

Comments made at the July 10, 2001, Governor's Regulatory Review Council meeting:

At the July 10, 2001, Council meeting, Michael Galloway reiterated General Motors Corporation's complaint that the use of the term "incidental to" is overly broad, goes beyond the Department's statutory authority, and is inconsistent with legislative intent.

Response: At the direction of the Council, the Department worked with Mr. Galloway and General Motors Corporation to try to define "incidental to" in a way that was agreeable to all parties. The definition, in R15-2D-101, that we came up with is the following:

"Incidental to" means occurring in, or associated with, the normal, typical, or customary operations of the particular trade or business under consideration.

All parties agree that this definition is an improvement over the previous one used. However, Mr. Galloway and General Motors Corporation, apparently, are not completely satisfied with the definition.

The Department believes that the definition quoted above is consistent with the statutory definition of business income, which states:

"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

The use of "incidental to" and its definition is well within the Department's authority to interpret the phrase "income arising from transactions and activity in the regular course of the taxpayer's trade or business."

Further, the Department reviewed the statutes and regulations of other states (and the District of Columbia) and found that of the 25 states that have adopted a definition of business income similar to the one quoted above, 19 use the term "incidental" in the related regulations. Thus, the use of "incidental to" is consistent with the Arizona Legislature's goal of uniformity in the taxation of multistate businesses. (See, A.R.S. § 43-1149.)

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 the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE

INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER D. CORPORATIONS

ARTICLE 1. GENERAL

Section
R15-2D-101. Definitions

ARTICLE 4. MULTISTATE DIVISION OF INCOME

Section
R15-2D-401. Unitary Business and Combined Returns
R15-2D-403. Taxable in Another State~~: In General~~
R15-2D-404. Apportionment Formula
R15-2D-405. Intercompany Eliminations

ARTICLE 5. BUSINESS AND NONBUSINESS INCOME

Section
R15-2D-501. General
R15-2D-502. Rents From Real and Tangible Personal Property
R15-2D-503. Gains or Losses From Sales of Assets
R15-2D-504. Interest
R15-2D-505. Dividends

ARTICLE 6. PROPERTY FACTOR

ARTICLE 7. PAYROLL FACTOR

ARTICLE 8. SALES FACTOR

ARTICLE 9. DEPARTURE FROM STANDARD APPORTIONMENT AND ALLOCATION PROVISIONS

SUBCHAPTER D. CORPORATIONS

ARTICLE 1. GENERAL

R15-2D-101. Definitions

In addition to the definitions provided in A.R.S. §§ 43-104, 43-1101, and 43-1131, the following definitions apply to this Subchapter:

A. ~~"Taxpayer" shall mean any person subject to a tax imposed by Title 43, Arizona Revised Statutes, but in no case shall it include the United States, this state, counties, cities, towns, school districts or other political subdivisions or units of this state or federal government. "Person" includes individuals, fiduciaries, partnerships, and corporations.~~

"Allocation" means the assignment of nonbusiness income to a particular state.

B. "Apportionment" means ~~refers to~~ the division of business income between states by the use of a formula ~~containing~~ that contains apportionment factors. ~~If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from activities within this state shall be determined by apportionment.~~

C. ~~"Allocation" refers to the assignment of non-business income to a particular state. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its non-business income or loss within or without this state in accordance with A.R.S. § 43-1135 through 43-1138.~~

"Arizona affiliated group" has the same meaning as prescribed in A.R.S. § 43-947(I).

D. "Business activity" means ~~refers to the~~ transactions and activity occurring in the regular course of a particular ~~taxpayer's unitary~~ trade or business of a taxpayer.

E. ~~"Combined report". If a particular unitary trade or business is carried on by a taxpayer and 1 or more affiliated taxpayers united by a bond of direct or indirect ownership or control of more than fifty percent (50%) and a part of the business is~~

~~conducted in Arizona by 1 or more of the members of the group, the business income attributable to such member or members shall be apportioned by multiplying the group's unitary business income by the average of the property, payroll and sales factors. Those factors are determined by dividing the Arizona property, payroll and sales figures by the total property, payroll and sales figures of all the members of the unitary group. The property, payroll and sales factors are to be determined in accordance with the rules described in R15-2D-601 through R15-2D-806. The extent of the unitary business or group is limited to that business which is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132.~~

"Combined return" means a corporate income tax return filed by a group of commonly owned corporations or businesses that constitute a unitary business, except that a combined return does not include either a foreign corporation that is not itself subject to a tax imposed by A.R.S. Title 43, or an insurance company that is exempt under A.R.S. § 43-1201.

"Consolidated return" means a corporate income tax return filed by an Arizona affiliated group under A.R.S. § 43-947.

"Employee" means any officer of a corporation; or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

"Incidental to" means occurring in, or associated with, the normal, typical, or customary operations of the particular trade or business under consideration.

"Sales" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of a trade or business and includes all gross receipts of the taxpayer not allocated under A.R.S. §§ 43-1134 through 43-1138.

"Unitary business" means an entity, group of entities, or components of an entity whose basic operations are substantially integrated and interdependent. The determination of whether an entity, group of entities, or components of an entity constitute a unitary business is made under R15-2D-401.

ARTICLE 4. MULTISTATE DIVISION OF INCOME

R15-2D-401. Unitary Business and Combined Returns

A. ~~Two or more businesses of a single taxpayer. A taxpayer may have more than 1 "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.~~ An entity, group of entities, or components of an entity is not a unitary business for apportionment purposes unless there is actual substantial interdependence and integration of the basic operations of the business carried on in more than one taxing jurisdiction. The potential to operate an entity or a component as part of the unitary business is not dispositive.

~~1.~~**B.** ~~Single unitary trade or business and a combined report.~~ The determination of whether the ~~activities~~ operations of ~~the~~ a taxpayer constitute a ~~single trade or~~ unitary business ~~or more than 1 trade or business will turn on the facts in each case. In general, the activities of the taxpayer will be considered a single unitary business if there is evidence to indicate that the basic operations of the components under consideration are integrated and interdependent. The following definition of a single unitary business~~ is based on economic substance and not form. Therefore, a unitary business may consist of part of a corporation, one corporation, or many corporations. If the unitary business consists of more than one corporation, ~~a combined report by~~ the ~~entities~~ corporations comprising the unitary business shall file a combined return apportioning the business income of the corporations using a single apportionment formula ~~is required by the Department~~. ~~Components of the combined report must reconcile accounting periods and systems if they are not compatible. See subsections R15-2D-101(E) and R15-2D-401 (B) for methods of filing a combined report and reconciling incompatible accounting periods. The entities comprising the unitary business must be united by a bond of direct or indirect ownership or control of more than fifty percent (50%) of the voting stock of a subsidiary corporation. There must be common management of the component parts or entities. At least some part of the unitary business must be conducted in Arizona.~~

C. The main ~~fundamental~~ reason for defining a business as unitary is that its components in various states are so tied together at the basic operational level that it is ~~truly~~ difficult to determine the state in which profits are ~~actually~~ earned. Centralized top-level management, financing, accounting, insurance and benefit programs, or overhead functions by a home office are not sufficient ~~characteristics in themselves~~ for a business to be unitary without further analysis of the basic operations of the ~~component~~ components ~~businesses~~.

~~An entity or group of entities is not a unitary business for apportionment purposes unless there is actual substantial interdependence and integration of the basic operations of the business carried on in more than 1 taxing jurisdiction. The potential to operate a component as part of the unitary business is not dispositive. In the manufacturing, producing or mercantile type of business, a substantial transfer of material, products, goods, technological data, processes, machinery, and equipment between the branches, divisions, subsidiaries or affiliates is required for an entity or group of entities to be defined as a unitary business.~~

~~A transfer of over twenty percent (20%) of the total goods annually manufactured, produced or purchased as inventory for processing and/or sale by the transferor, or over twenty percent (20%) of the total goods annually acquired for processing and/or sale by the transferee would be presumptive evidence of a unitary business. A smaller percentage of goods transferred may be indicative of a unitary business depending upon the presence of other characteristics indicating operational integration.~~

~~In a unitary service business, the operations of the various component parts or entities of the business are integrated and interrelated by their involvement with the central office or parent in delivering substantially the same service. The day-to-day operations of these components use the same procedures and technologies which are developed, organized, purchased and/or prescribed by the central office or parent. There usually is an exchange of employees among the component parts and centralized training of employees.~~

~~Generally speaking, a conglomerate composed of diverse businesses is not a single unitary business. However, a line or line of business within the conglomerate may be a unitary business if the operations of the components of the line are integrated and interrelated as described herein. The cost of centralized services and functions performed by the parent corporation for diverse subsidiaries may be specifically allocated to the respective subsidiaries.~~

D. The following ~~While common ownership, common management and reconciled accounting systems of components~~ are necessary threshold characteristics for components of an entity, an entity, or a group of entities ~~for a business~~ to be considered a ~~single~~ unitary business ~~the,~~:

1. The entities comprising the unitary business are owned or controlled, directly or indirectly, by the same interests that collectively own more than 50 percent of the voting stock,
2. The entities or components share common management, and
3. The entities or components have reconciled accounting systems.

E. The presence of the ~~these~~ three characteristics listed in subsection (D) is not sufficient for a business to be considered unitary without evidence of substantial operational integration. ~~Some of the factors of a single unitary business which~~ Factors that indicate ~~basic~~ operational integration ~~are~~ include the following:

~~a.~~1. The same or similar business conducted by components;
~~b.~~2. Vertical development of a product by components, such as ~~i.e.~~, manufacturing, distribution, and sales;
~~c.~~3. Horizontal development of a product by components, such as ~~i.e.~~, sales, service, ~~and~~ repair, and financing;
~~d.~~4. Transfer of materials, goods, products, and technological data and processes~~,~~ between components;
~~e.~~5. Sharing of assets by components;
~~f.~~6. Sharing or exchanging of operational employees by components;
~~g.~~7. Centralized training of operational employees;
~~h.~~8. Centralized mass purchasing of inventory, materials, equipment, and technology~~, etc.~~;
~~i.~~9. Centralized development and distribution of technology relating to the ~~on-going~~ day-to-day operations of the components;
~~j.~~10. Use of common trademark or logo at the basic operational level~~,~~;
11. ~~centralized~~ Centralized advertising with impact at the basic operational level;
~~k.~~12. Exclusive sales-purchase agreements between components;
~~l.~~13. Price differentials between components as compared to unrelated businesses;
~~m.~~14. Sales or leases between components; and
~~n.~~15. Any ~~Other~~ other ~~contributions~~ integration between components at the basic operational level.

F. Not ~~All~~ all of the ~~above~~ factors listed in subsection (E) need ~~not~~ be present in every unitary business~~, but factors indicating substantial integration at the basic operational level should be evident~~.

G. A manufacturing, producing, or mercantile type of business is not a unitary business unless there is a substantial transfer of material, products, goods, technological data and processes, or machinery and equipment between the branches, divisions, subsidiaries, or affiliates.

1. A transfer of 20 percent of the total goods annually manufactured, produced, or purchased as inventory for processing or sale, or both, by the transferor, or 20 percent of the total goods annually acquired for processing or sale, or both, by the transferee is presumptive evidence of a unitary business.
2. A smaller percentage of goods transferred may be indicative of a unitary business if other characteristics indicating substantial operational integration are present.

H. In a unitary service business, the operations of the various components or entities of the business are integrated and interrelated by their involvement with the central office or parent in delivering substantially the same service. The day-to-day operations of the components or entities use the same procedures and technologies that are developed, organized, purchased, or prescribed by the central office or parent. There usually is an exchange of employees among the components or entities and centralized training of employees.

I. A taxpayer may have more than one unitary business. In this case, it is necessary to determine the business income attributable to each separate unitary business. The income of each business is apportioned using an apportionment formula that considers the in-state and out-of-state factors of the business.

J. Generally, a conglomerate composed of diverse businesses is not a single unitary business. However, a line or lines of business within the conglomerate may be a unitary business if the operations of the components of the line or lines are integrated and interrelated.

~~B.~~K. All members of a combined return shall determine income using the same accounting period.~~Unitary business group; members having different accounting periods.~~

1. If the members of a combined return have different accounting periods, the ~~Utilization of the combined method of apportionment will ordinarily require that unitary income be determined generally on the same~~ accounting period to be used by the ~~for all~~ members shall be determined as follows:~~.~~
   a. If the combined return includes the common parent corporation, ~~Where the members two accounting periods differ,~~ the parent's accounting period is used ~~will be utilized~~.
   b. If the combined return does not include the ~~Where there is no~~ common parent corporation, the ~~income of the group's members shall be determined generally on the basis of the~~ accounting period of a ~~the~~ member that has a presence in ~~filing an~~ Arizona shall be used ~~return who is expected to have, on a recurring basis, the greater (or greatest) liability for Arizona income tax~~. The same group member's accounting period shall be used consistently from year to year.
2. Each member of a combined return that uses an accounting period that is different from the common accounting period determined in subsection (K)(1), shall use one of the following methods to determine the income to be included in the common accounting period:
   a. Determine ~~In complying with this requirement, any particular member, in determining the proper income to be included in the appropriate accounting period, may reflect~~ income and related deductions using ~~as may (or may not) be allocable to Arizona in accordance with the~~ actual book or accounting entries for the relevant period.
   b. Determine ~~On the other hand, the member may determine~~ income based on the number of months falling within the required common accounting period. For example, if one member ~~utilizes~~ uses a calendar year, and the common accounting period ends October 31, 1981, the member will include 2/12 of the income for the year ended December 31, 1980, and 10/12 of the income for the year ended December 31, 1981. Estimates may be necessary ~~where~~ if this proration method involves a member's year that ~~which~~ ends subsequent to the common accounting period.

R15-2D-403. Taxable in Another State~~: In General~~

A. ~~The~~ A taxpayer is ~~shall be~~ subject to the allocation and apportionment provisions of A.R.S. §§ 43-1131 through 43-1148 ~~Title 43, Article 4 of the Arizona Revised Statutes~~ if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the ~~such~~ taxpayer, by reason of ~~such~~ the business activity ~~(that is, the transactions and activity occurring in the regular course of a particular trade or business)~~, is taxable in another state~~.~~ under

~~1.~~ ~~A taxpayer shall be taxable within another state if it meets~~ either one of the two tests~~:~~ specified in A.R.S. § 43-1133.

~~a. If by reason of business activity in another state the taxpayer is subject to 1 of the types of taxes specified, namely: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or~~

~~b. If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.~~

~~2.~~ A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in that other state pertaining to the production of nonbusiness ~~non-business~~ income or business activities relating to a separate trade or business.

B. ~~Taxable in another state: when a corporation is "Subject to" a tax.~~ A taxpayer is "subject to" one of the taxes specified in A.R.S. § 43-1133(1) ~~subsection (A)(1)(a)~~ if it carries on business activities in a state and that state imposes one of the taxes on the taxpayer ~~such a tax thereon~~. Any taxpayer that ~~which~~ asserts that it is subject to one of the taxes specified in A.R.S. § 43-1133(1) in another state shall furnish to the Department ~~of this state~~ upon its request evidence to support that assertion. The Department ~~of this state~~ may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the laws of the other state~~;~~. ~~the~~ The taxpayer's failure to produce ~~such~~ this proof may be taken into account in determining whether the taxpayer ~~in fact~~ is subject ~~in the other state~~ to one of the taxes specified in A.R.S. 2 § 43-1133(1) in the other state ~~this regulation~~.

1. A ~~If the~~ taxpayer that voluntarily files and pays one or more of the ~~such~~ taxes specified in A.R.S. § 43-1133(1) when not required to do so by the laws of the other state or pays a minimal fee for qualification, ~~for~~ organization, or ~~for~~ the privilege of doing business in that state is not "subject to" one of the taxes specified in A.R.S. § 43-1133(1) if the taxpayer:
   a. Does not ~~actually~~ engage in business activity in that state; or
   b. Engages ~~Does actually engage~~ in some business activity, not sufficient for nexus, and the minimum tax bears no ~~relation~~ relationship to the taxpayer's business activity within that state~~, the taxpayer is not "subject to" 1 of the specified taxes within the meaning of this regulation~~.
2. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states that ~~which~~ do not impose an income tax, other types of taxes may be imposed as a substitute ~~for an income tax~~. Therefore, the Department shall consider only those taxes enumerated in A.R.S. § 43-1133(1)~~, which may be considered as~~ that are basically revenue raising rather than regulatory measures~~, shall be considered~~ in determining whether the taxpayer is "subject to" one of the taxes in another state.

Example 1: State A requires all nonresident corporations that qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. Failure to pay the tax bars a corporation from using the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the Secretary of State but does not carry on any business activity in State A (although it may use the courts of State A). Corporation X is not "taxable" in State A.

Example 2: The facts are the same as example one except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is "subject to" the net income tax of State A and is "taxable" in State A.

Example 3: State B requires all nonresident corporations qualified or registered in State B to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three-factor apportionment formula. Nonresident Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is "taxable" in State B.

Example 4: State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

C. ~~Taxable in another state: When a state has jurisdiction to subject a taxpayer to a net income tax.~~ ~~The 2nd test in~~ A.R.S. § 43-1133(2) ~~subsection (A)(1)(b)~~ applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of ~~such~~ the business activity. Jurisdiction to tax is not present ~~where~~ if the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. §§ 381-384.

R15-2D-404. Apportionment Formula

A. All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula ~~set forth~~ in A.R.S. § 43-1139. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor of the trade or business of the taxpayer.

B. A unitary business that files a combined return shall use an apportionment formula that combines the property, payroll, and sales figures of all of the unitary group members before calculating the factors.

C. An Arizona affiliated group that files a consolidated return shall use an apportionment formula that combines the property, payroll, and sales figures of all of the members of the Arizona affiliated group before calculating the factors.

D. This Section does not apply to a taxpayer engaged in air commerce that apportions its income in accordance with A.R.S. § 43-1139(B).

R15-2D-405. Intercompany Eliminations

Members of a combined or consolidated return shall eliminate intercompany amounts included in the group's income, expense, and apportionment factors when ~~Unitary business income; eliminations; intercompany transactions.~~

~~Elimination of income and deduction items arising from transactions between members of the group must be done whenever~~ necessary to avoid distortion of the group's Arizona taxable income ~~income, the denominators used by all members of the group in calculating apportionment factors, or the numerators used by any particular member of the group in calculating its apportionment factors~~.

ARTICLE 5. BUSINESS AND NONBUSINESS INCOME

R15-2D-501. General

A. ~~Business and non-business income defined. "Business income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. Parts or components of the taxpayer's regular trade or business operations are limited to that business which is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132. In essence, all income from the conduct of trade or business operations of a taxpayer is business income.~~ For purposes of administration, the income of ~~the~~ a taxpayer is business income unless clearly classifiable ~~classified~~ as nonbusiness ~~non-business~~ income.

~~**B.** "Non-business income" means all income other than business income.~~

~~**C.**~~**B.** The classification of income by ~~the~~ labels ~~occasionally used~~, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, or nonoperating income, ~~etc.,~~ is of no aid in determining whether income is business or nonbusiness ~~non-business~~ income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business.

Accordingly, the critical ~~element~~ elements in determining whether income is "business income" or "nonbusiness income" ~~"non-business income" is the identification of~~ are the transactions and activity ~~which are the elements~~ of a particular trade or business. In general, all transactions and ~~activities~~ activity of ~~the~~ a taxpayer ~~which~~ that are ~~dependent upon or contribute~~ the result of or incidental to the operations of a particular trade or business of the taxpayer ~~the taxpayer's unitary business as a whole constitute the taxpayer's trade or business and shall be~~ are transactions and activity arising in the regular course of, and ~~shall~~ constitute integral parts of, a trade or business.

R15-2D-502. Rents From Real and Tangible Personal Property

~~Rents from real and tangible personal property.~~ Rental income from real and tangible personal property is business income if the property with respect to which the rental income ~~was~~ is received is used in the taxpayer's trade or business or is incidental ~~attendant thereto~~ to the trade or business and ~~therefore~~ is includable ~~includible~~ in the property factor ~~under R15-2-1140~~.

Example 1: The taxpayer operates a multistate car rental business. The income from the car rentals is business income.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

Example 3: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are leased to others. The rental of the two floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income.

Example 4: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

Example 5: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

Example 6: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is business income and the gain on the sale of the plant is business income.

Example 7: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, the taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, the taxpayer sold the building at a gain (or loss). The net rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income.

R15-2D-503. Gains or Losses From Sales of Assets

Gain ~~Gains or losses from sales of assets. gain~~ or loss from the sale, exchange, or other disposition of ~~real or~~ tangible or intangible personal property or real property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if ~~such~~ the property was ~~utilized~~ used for the production of nonbusiness ~~non-business~~ income or otherwise was removed from the property factor, in accordance with Article 6, ~~for a substantial period of time~~ before ~~the year of~~ its sale, exchange, or other disposition, the gain or loss ~~will constitute~~ constitutes nonbusiness ~~non-business~~ income. ~~Five years or more shall be considered a substantial period of time.~~

Example 1: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example 2: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

Example 3: Same as example two except that the plant was closed and put up for sale but was not in fact sold until a buyer was found 18 months later. The gain is business income.

Example 4: Same as example two except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

Example 5: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, the taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an unrelated investment company under a five-year lease. Upon expiration of the lease, the taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is nonbusiness income.

R15-2D-504. Interest

~~Interest.~~ Interest income is business income ~~where~~ if the intangible property with respect to which the taxpayer receives interest ~~is received~~ arises out of or is created in the regular course of the taxpayer's trade or business operations or ~~where~~ if the purpose for acquiring and holding the intangible property is related to or incidental to the ~~taxpayer's~~ trade or business operations.

Example 1: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. The taxpayer receives service charges, interest, or time-price differentials and the like with respect to installment sales and revolving charge accounts. These amounts are business income.

Example 2: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is business income.

Example 3: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover items such as worker's compensation claims, rain and storm damage, and machinery replacement. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state, and local tax obligations. The interest income is business income.

Example 4: The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by investing the funds pending their redemption. The interest income is business income.

Example 5: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital totaling $200,000 that it regularly invests in short-term, interest-bearing securities. The interest income is business income.

Example 6: In January, the taxpayer sells all of the stock of a subsidiary for $20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be used. The interest income is nonbusiness income.

R15-2D-505. Dividends

~~Dividends.~~ Dividends are ~~shall be~~ business income ~~where~~ if the stock with respect to which the taxpayer receives dividends ~~are received~~ arises out of or was acquired in the regular course of the taxpayer's trade or business operations or ~~where~~ if the purpose for acquiring and holding the stock is related to or incidental to ~~such~~ the trade or business operations.

Example 1: The taxpayer operates a multistate chain of stock brokerage houses. During the year, the taxpayer receives dividends on stock that it owns. The dividends are business income.

Example 2: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover items such as worker's compensation claims, rain and storm damage, and machinery replacement. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

Example 3: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.

Example 4: The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

Example 5: The taxpayer receives dividends from the stock of its subsidiary or affiliate, which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

Example 6: The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness income.

R15-2D-506. Royalties

~~Royalties.~~ Patent and copyright royalties ~~and other royalties and licensing fees~~ are business income ~~where~~ if the patent or copyright with respect to which the taxpayer receives royalties ~~and other royalties and licensing fees were received~~ arose arises out of or ~~was~~ is created in the regular course of the taxpayer's trade or business operations or ~~where~~ if the purpose for acquiring and holding the patent or copyright is related to ~~such~~ the trade or business operations. Other royalties and licensing fees are business income if the property or licensing agreement that generates the income arises out of or is created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the property or license agreement is related to or incidental to the trade or business operations.

Example 1: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.
Example 2: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. The taxpayer later uses these acquired copyrights in its business. Any royalties received on these copyrights are business income.
Example 3: The same as example two, except that the acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent are nonbusiness income.

R15-2D-507. Proration of Deductions

~~A.~~ ~~Proration of deductions.~~ In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness ~~non-business~~ income. In some cases an allowable deduction may ~~be applicable~~ apply to the business incomes of more than one trade or business or ~~and/or~~ to several items of nonbusiness ~~non-business~~ income. In ~~such~~ these cases the deduction shall be prorated among ~~such~~ the trades or businesses and ~~such~~ the items of nonbusiness ~~non-business~~ income in a manner ~~which~~ that fairly distributes the deduction among the classes of income to which it ~~is applicable~~ applies.

~~B.~~ ~~Consistency and uniformity in reporting.~~

1. ~~Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.~~
2. ~~State-to-state uniformity. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.~~

R15-2D-508. Consistency and Uniformity in Reporting

~~Consistency and uniformity in reporting.~~

1.**A.** ~~Year-to-year consistency. In filing returns with this state, if~~ If ~~the~~ a taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness ~~non-business~~ income, or the manner of prorating any related deduction, in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

2.**B.** ~~State-to-state uniformity.~~ If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness ~~non-business~~ income, or the application or proration of any related deduction, the taxpayer shall disclose ~~in its return to this state~~ the nature and extent of the variance upon request by the Department.

ARTICLE 6. PROPERTY FACTOR

R15-2D-601. General

A. ~~Property factor: In General.~~ The property factor, as defined in A.R.S. § 43-1140, ~~of the apportionment formula~~ for each trade or business of ~~the~~ a taxpayer ~~shall include~~ includes all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the ~~such~~ trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, ~~and other real and tangible personal property~~ but does not include coin or currency.

B. ~~Property used in connection with the production of non-business income shall be excluded from the property factor.~~ A taxpayer shall exclude from the property factor property used in connection with the production of nonbusiness income.

C. Property used both in the regular course of a taxpayer's trade or business and in the production of nonbusiness ~~non-business~~ income ~~shall be~~ is included in the property factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the property factor will depend upon the facts of each case.

D. The property factor ~~shall include~~ includes the average value of property includable in the factor.

~~B.~~ ~~Property factor: denominator. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the tax period. The term "all of the taxpayer's real and tangible personal property" is limited to all of the property owned or rented by the unitary business, which business is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132.~~

R15-2D-602. Property Used for the Production of Business Income

A. ~~Property factor: Property used for the production of business income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer.~~ A taxpayer shall include in the property factor property that is used, available for use, or capable of being used during the tax period in the regular course of the taxpayer's trade or business.

B. ~~Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor.~~ A taxpayer shall include in the property factor property held as reserves or standby facilities or property held as a reserve source of materials. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor.

C. ~~Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer.~~ A taxpayer shall exclude from the property factor property or equipment under construction during the tax period, except inventoriable goods in process, until the property or equipment is used in the regular course of the taxpayer's trade or business. If the property or equipment is partially used in the regular course of the taxpayer's trade or business ~~of the taxpayer~~ while under construction, the value of the property to the extent used shall be included in the property factor.

D. Property used in the regular course of the trade or business of the taxpayer ~~shall remain~~ remains in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness ~~non-business~~ income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

Example 1: The taxpayer closes its manufacturing plant in State X and holds the property for sale. The property remains vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

Example 2: Same as example one except that the property is rented until the plant is sold. The plant is included in the property factor until the plant is sold.

Example 3: The taxpayer closes its manufacturing plant and leases the building under a five-year lease. The plant is included in the property factor until the lease begins.

Example 4: The taxpayer operates a chain of retail grocery stores. Taxpayer closes Store A, which is then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which are leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A begins.

R15-2D-603. Property Factor Numerator

~~Property factor: numerator.~~ The numerator of the property factor ~~shall include~~ is the average value of the real and tangible personal property owned or rented by ~~the~~ a taxpayer and used in this state during the tax period in the regular course of the taxpayer's trade or business ~~of the taxpayer~~.

1. Property in transit between locations of the taxpayer to which it belongs ~~shall be~~ is considered to be at its destination for purposes of the property factor.
2. Property in transit between a buyer and seller ~~which~~ that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices ~~shall be~~ is included in the numerator according to the state of destination.
3. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that ~~which~~ ~~are~~ is located within and without this state during the tax period ~~shall be~~ is determined for purposes of the numerator of the property factor on the basis of total time within the state during the tax period.
4. An automobile assigned to a traveling employee ~~shall be~~ is included in the numerator of the property factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the property factor of the state in which the automobile is licensed.

R15-2D-604. Valuation of Owned Property

A. Property owned by ~~the~~ a taxpayer ~~shall be~~ is valued at its original cost. Generally ~~As a general rule~~, "original cost" ~~is deemed to be~~ means the basis of the property for federal income tax purposes (~~prior to~~ before any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements ~~thereto~~ to the property and partial disposition ~~thereof~~ of the property, by reason of sale, exchange, abandonment, or other similar event ~~etc~~. However, capitalized intangible drilling and development costs are included in the property factor whether or not they have been expensed for either federal or state tax purposes.

Example 1: The taxpayer acquires a factory building in this state at a cost of $500,000 and, 18 months later, expends $100,000 for major remodeling of the building. The taxpayer files its return for the current taxable year on the calendar-year basis. The taxpayer claims a depreciation deduction in the amount of $22,000 with respect to the building on the return for the current taxable year. The value of the building includable in the numerator and the denominator of the property factor is $600,000; the depreciation deduction is not taken into account in determining the value of the building for purposes of the property factor.

Example 2: During the current taxable year, Corporation X merges into Corporation Y in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, Corporation X owns a factory that it built five years earlier at a cost of $1,000,000. Corporation X has been depreciating the factory at the rate of two percent per year, and its basis to Corporation X, at the time of the merger is $900,000. Because the property is acquired by Corporation Y in a transaction in which, under the Internal Revenue Code, its basis to Corporation Y is the same as its basis to Corpora-

tion X, Corporation Y includes the property in its property factor at Corporation X's original cost, without adjustment for depreciation, $1,000,000.

Example 3: Corporation Y acquires the assets of Corporation X in a liquidation by which Corporation Y is entitled to use its stock cost as the basis of the Corporation X assets under Internal Revenue Code § 334(b)(2). Under these circumstances, Corporation Y's cost of the assets is the purchased price of the Corporation X stock, prorated over the Corporation X assets.

B. If the original cost of property is unascertainable, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

C. Inventory of stock of goods ~~shall be~~ is included in the property factor in accordance with the valuation method used for federal income tax purposes.

D. Property acquired by gift or inheritance ~~shall be~~ is included in the property factor at its basis for determining depreciation for federal income tax purposes.

R15-2D-605. Valuation of Rented Property

A. ~~Property factor: valuation of rented property.~~ Property rented by ~~the~~ a taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for ~~such~~ the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the taxpayer uses the property ~~which~~ that produces the subrents ~~is used~~ in the regular course of a trade or business of the taxpayer when it is producing ~~such~~ the subrent income; accordingly, there is no reduction in its value. If the adjustment for subrents produces a negative or inaccurate value of rented property, the special provisions in R15-2D-902 apply.

Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Because the subrents are business income they are not deducted from rent paid by the taxpayer for the food market.

Example 2: The taxpayer rents a five-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses and persons such as professionals and shops. The rental of the two floors is incidental to the operation of the taxpayer's trade or business. Because the subrents are business income, they are not deducted from the rent paid by the taxpayer.

Example 3: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the 18 floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. Because the subrents are nonbusiness income they are deducted from the rent paid by the taxpayer.

B. "Annual rental rate" ~~is~~ means the amount paid as rental for property for a 12-month period ~~(i.e., the amount of the annual rent)~~.

1. ~~Where~~ If property is rented for less than a 12-month period, the rent paid for the actual period of rental ~~shall constitute~~ is the "annual rental rate" for the tax period.
2. If ~~However, where~~ a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the taxpayer shall annualize the rent paid for the short tax period ~~shall be annualized~~. If the rental term is for less than 12 months, the rent ~~shall~~ is not ~~be~~ annualized beyond its term.

   Example 1: Taxpayer A ordinarily files its returns based on a calendar year and merges into Taxpayer B on April 30. The net rent paid under a lease with five years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 x 12).

   Example 2: Same facts as in example one except that the lease would have terminated on August 31. In this case, the annualized rent is $20,000 ($2,500 x 8).
3. A taxpayer ~~Rent~~ shall not ~~be annualized~~ annualize rent ~~because of the uncertain duration~~ when the rental term is on a month-to-month basis.

C. "Annual rent" ~~is~~ means the actual sum of money or other consideration payable, directly or indirectly, by ~~the~~ a taxpayer or for its benefit for the use of ~~the~~ property and includes:

1. Any amount payable for the use of real or tangible personal property, or any part ~~thereof~~ of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise~~;~~.

   Example: A taxpayer, under the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).
2. Any amount payable as additional rent or ~~in lieu~~ instead of rents, such as interest, taxes, insurance, repairs, or any other items ~~which~~ that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, the amount of rent ~~shall be~~ is determined by consideration of the relative values of the rent and the other items.

   Example 1: A taxpayer, under to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

Example 2: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is $1,000 of which $700 is for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700.

~~3.~~**D.** "Annual rent" does not include:

1. Incidental ~~incidental~~ day-to-day expenses, such as hotel or motel accommodations~~,~~ and daily rental of automobiles~~, etc.~~; and
2. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For purposes of this subsection, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, irrespective of the method of payment or how the consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

~~B.~~**E.** For purposes of the property factor, ~~Leasehold~~ leasehold improvements ~~shall, for the purposes of the property factor, be~~ are treated as property owned by ~~the~~ a taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. ~~Hence, the~~ The original cost of leasehold improvements ~~shall be~~ are included in the property factor.

R15-2D-606. Averaging of Monthly Property Values

The ~~As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the~~ Department may require or allow averaging ~~by~~ of monthly values if ~~such~~ that method ~~of averaging~~ is required to properly reflect the average value of ~~the~~ a taxpayer's property for the tax period. The Department shall not require the averaging of monthly values if that method has a de minimis effect on a taxpayer's Arizona tax liability for the tax period.

1. Averaging ~~by~~ of monthly values will generally be ~~applied~~ required if substantial fluctuations in the values of the property exist during the tax period or ~~where~~ if property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer's property is as follows:

January	$2,000	July	$15,000
February	$2,000	August	$17,000
March	$3,000	September	$23,000
April	$3,500	October	$25,000
May	$4,500	November	$13,000
June	$10,000	December	$2,000
Subtotal	$25,000	Subtotal	$95,000
		Total	$120,000

The average monthly value of the taxpayer's property includable in the property factor for the income year is $10,000 (120,000 divided by 12).

2. ~~Averaging with respect to rented~~ Rented property is averaged ~~achieved automatically~~ by ~~the method of~~ determining the net annual rental rate of ~~such~~ the property.

R15-2D-607. Consistency and Uniformity in Reporting

A. ~~Property factor: consistency and uniformity in reporting.~~

1. ~~Year-to-year consistency: In filing returns with this state, if~~ If ~~the~~ a taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

~~2.~~**B.** ~~State-to-state uniformity:~~ If the returns or reports filed by ~~the~~ a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property ~~and~~ or in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose ~~in its return to this state~~ the nature and extent of the variance upon request by the Department.

ARTICLE 7. PAYROLL FACTOR

R15-2D-701. General

A. The payroll factor, as defined in A.R.S. § 43-1143, ~~of the apportionment formula~~ for each trade or business of ~~the~~ a taxpayer ~~shall include~~ includes the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

1. The total amount "paid" to employees ~~shall be~~ is determined upon the basis of the taxpayer's accounting method.
   a. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued ~~shall be~~ is deemed to have been paid.

b. Notwithstanding the taxpayer's method of accounting, ~~at the election of the taxpayer,~~ compensation paid to employees may, at the election of the taxpayer, be included in the payroll factor by use of the cash method if the taxpayer is required to report ~~such~~ the compensation under that ~~such~~ method for unemployment compensation purposes.

2. The compensation of any employee for ~~on account of~~ activities that ~~which~~ are connected with the production of non-business ~~non-business~~ income ~~shall be~~ is excluded from the payroll factor.

Example 1: The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of the taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of those wages is included in the payroll factor.

Example 2: The taxpayer owns various securities that it holds as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.

~~2.~~3. ~~The term "compensation" shall mean wages, salaries, commissions and any other form of remuneration paid to employees for personal services.~~ Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor.

4. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that ~~such~~ the amounts constitute income to the recipient under the ~~federal~~ Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether benefits or services would constitute income to the employees shall be made as though the employees were subject to the Internal Revenue Code.

~~3. The term "employee" shall mean:~~

~~a. Any officer of a corporation; or~~

~~b. Any individual who, under the usual common-law rules applicable in determining the employer- employee relationship, has the status of an employee.~~

B. Generally, a person ~~will be~~ is considered to be an employee if the person ~~he~~ is ~~included~~ treated by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act~~;~~. ~~except that, since~~ However, because certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who ~~would~~ are not ~~be~~ employees under the usual common-law rules, ~~it~~ a taxpayer may ~~be established~~ establish that a person who is ~~included~~ treated as an employee for purposes of the Federal Insurance Contributions Act is not an employee for ~~the~~ purposes of this Section ~~regulation~~.

R15-2D-702. Payroll Factor Denominator

~~Payroll factor: denominator.~~ The denominator of the payroll factor is the total compensation paid by the taxpayer everywhere during the tax period ~~by the unitary business, which business is limited to that subject to the tax imposed by and computed pursuant to the Internal Revenue Code during the tax period, except as provided in A.R.S. § 43-1132~~. Therefore ~~Accordingly~~, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation ~~not taxable~~ is included in the denominator of the payroll factor.

Example: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition, the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation under the provisions of Public Law 86-272. The compensation paid to the employees in State C is assigned to State C where the services are performed (included in the denominator but not the numerator of the payroll factor) even though the taxpayer is not taxable in State C.

R15-2D-703. Payroll Factor Numerator

~~Payroll factor: numerator.~~ The numerator of the payroll factor is the total ~~amount~~ compensation paid in this state during the tax period by the taxpayer for compensation. The tests in A.R.S. § 43-1144 ~~to be applied in~~ for determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if the taxpayer includes compensation paid to employees ~~is included~~ in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report ~~such~~ the compensation under ~~such~~ this method for unemployment compensation purposes, the Department ~~it~~ shall ~~be presumed~~ presume that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Article. The presumption may be overcome by ~~satisfactory~~ evidence satisfactory to the Department that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

R15-2D-704. Compensation Paid in this State: Definitions

~~A.~~ For the purpose of determining whether compensation ~~Compensation~~ is paid in this state under this Article and A.R.S. § 43-1144, the following definitions apply ~~if any 1 of the following tests applied consecutively, are met~~:

~~1. The employee's service is performed entirely within the state.~~

~~2. The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state.~~

1. "Incidental" ~~The word "incidental"~~ means any service ~~which~~ that is temporary or transitory in nature~~,~~ or ~~which is~~ rendered in connection with an isolated transaction.

~~3. If the employee's services are performed both within and without this state, the employee's compensation shall be attributed to this state:~~

~~a. If the employee's base of operations is in this state; or~~

~~b. If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or~~

~~c. If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.~~

~~B.~~2. ~~The term~~ "Place ~~place~~ from which the service is directed or controlled" means ~~refers to~~ the ~~place~~ site from which the power to direct or control is exercised by the taxpayer.

~~C.~~3. ~~The term~~ "Base ~~base~~ of operations" ~~is~~ means the ~~place~~ site of more or less permanent nature from which the employee starts ~~his~~ work and to which ~~he~~ the employee customarily returns in order to:

a. ~~receive~~ Receive instructions from the taxpayer~~,~~ ~~or~~

b. Receive communications from ~~his~~ the taxpayer's customers or other persons, ~~or to~~

c. ~~replenish~~ Replenish stock or other materials,

d. ~~repair~~ Repair equipment, or

e. ~~perform~~ Perform any other functions necessary to the exercise of ~~his~~ the trade or profession ~~at some other point or points~~.

R15-2D-705. Consistency and Uniformity in Reporting

A. ~~Consistency and uniformity in reporting.~~

1. ~~Year-to-year consistency.~~ ~~In filing returns with this state,~~ ~~if~~ If the taxpayer departs from or modifies the treatment of compensation paid used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

~~2.~~**B.** ~~State-to-state uniformity.~~ If the returns or reports filed by ~~the~~ a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose ~~in its return to this state~~ the nature and extent of the variance upon request by the Department.

ARTICLE 8. SALES FACTOR

R15-2D-801. General

A. ~~The term "sales" shall mean all gross receipts of the taxpayer not allocated pursuant to R15-2-1134 through R15-2-1138. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from a transactions and activity in the regular course of such unitary trade or business, which business is limited to that business subject to the tax imposed by and computed pursuant to the Internal Revenue Code.~~ The following are provisions ~~rules~~ for determining "sales" ~~in various situations~~ under A.R.S. § 43-1145:

1. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of ~~such~~ the goods or products (or other property of a kind ~~which~~ that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. For purposes of this subsection, ~~Gross~~ "gross receipts" ~~for this purpose~~ means gross sales less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to ~~such~~ the sales. Federal and state excise taxes (including sales taxes) ~~shall be~~ are included as part of ~~such~~ the receipts if ~~such~~ the taxes are passed on to the buyer or included as part of the selling price of the product.
2. In the case of cost-plus-fixed-fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost plus the fee.
3. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency~~,~~ or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of ~~such~~ the services including fees, commissions ~~commission~~, and similar items.
4. In the case of a taxpayer engaged in renting or licensing the use of real or tangible property, "sales" includes the gross receipts from ~~the rental, lease, or licensing the use of the property~~ these activities.
5. In the case of a taxpayer engaged in the sale, assignment, or licensing the use of intangible personal property such as patents and copyrights, "sales" includes the gross receipts ~~therefrom~~ from these activities.
6. If a taxpayer derives receipts from the sale of equipment used in its business, ~~such~~ those receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

~~7.~~**B.** In some cases certain gross receipts ~~should be~~ are disregarded in determining the sales factor ~~in order~~ so that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See R15-2D-903.

R15-2D-803. Sales Factor Numerator

~~Sales factor: numerator.~~ The numerator of the sales factor ~~shall include~~ is the gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to ~~such~~ the gross receipts ~~shall be~~ are included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

R15-2D-804. ~~Sales of Tangible Personal~~ Property Delivered or Shipped to a Purchaser within this State

A. ~~Sales of tangible personal property in this state.~~

~~1. Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state:~~

~~a. If the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or~~

~~b. If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.~~

~~2.~~ Property ~~shall be~~ is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example: The taxpayer, with inventory in State A, sells $100,000 of its products to a purchaser with branch stores in several states, including this state. The order for the purchase is placed by the purchaser's central purchasing department, located in State B. The taxpayer ships $25,000 of the purchase order directly to purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

~~3.~~**B.** Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in this state constitute property delivered or shipped to a purchaser within this state.

~~4.~~**C.** The term "purchaser within this state" ~~shall include~~ includes the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

Example: A taxpayer in this state sells merchandise to a purchaser in State A. The taxpayer directs the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state according to purchaser's instructions. The sale by the taxpayer is "in this state."

~~5.~~**D.** ~~When~~ If property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in this state in which the taxpayer is subject to tax. The sale by the taxpayer is in this state.

~~6. If the taxpayer is not taxable in the state of the purchaser, the sale is attributable to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.~~

~~7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a 3rd party to the purchaser, the following rules apply:~~

~~a. If the taxpayer is taxable in the state from which the 3rd party ships the property, then the sale is in that state.~~

~~b. If the taxpayer is not taxable in the state from which the 3rd party ships property, then the sale is in this state.~~

R15-2D-805. Sales of Tangible Personal Property to the United States Government

~~Sales factor:~~ Sales of tangible personal property to the United States Government are not included in the numerator of the sales factor ~~in this state~~. ~~Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.~~ For the purposes of this Section ~~regulation~~, only sales for which the United States Government makes direct payment to the seller ~~pursuant to~~ under the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to ~~the~~ a prime contractor, who has ~~the party to~~ the contract with the United States Government, do not constitute sales to the United States Government.

Example 1: A taxpayer contracts with General Services Administration to deliver X number of trucks that are paid for by the United States Government. The sale is a sale to the United States Government.

Example 2: The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

R15-2D-806. Sales ~~Other Than~~ other than Sales of Tangible Personal Property in ~~This~~ this State

This Section provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government)~~:~~. ~~under~~ Under this Section, gross receipts are attributed to this state if the income-producing activity ~~which~~ that ~~gave~~ gives rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state rather than in any other state, based on costs of performance.

1. ~~Income-producing activity: Defined.~~ The term "income-producing activity" applies ~~shall apply~~ to each separate item of income and means ~~shall mean~~ the transactions and ~~activity~~ activities directly engaged in by ~~the~~ a taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. ~~Such~~ Income-producing activity ~~shall~~ does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income-producing activity" ~~shall include~~ includes but is not limited to the following:
   a. The rendering of personal services by employees or the ~~utilization~~ use of tangible and intangible property by the taxpayer in performing a service~~.~~;
   b. The sale, rental, leasing, licensing, or other use of real property~~.~~;
   c. The rental, leasing, licensing, or other use of tangible personal property~~.~~; and
   d. The sale, licensing, or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income-producing activity.
2. ~~Costs of performance: Defined.~~ The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.
3. ~~In general. Receipts (other than from sales of tangible personal property) in respect to a particular income- producing activity are in this state if:~~
   ~~a. The income-producing activity is performed wholly both in this state; or~~
   ~~b. The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.~~
4. ~~Specific rules.~~ The following are ~~specific~~ special provisions ~~rules~~ for determining when receipts from the income-producing activities described ~~below~~ are in this state:
   a. ~~Real property.~~ Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.
   b. ~~Tangible personal property.~~ Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing, or other use of tangible personal property in this state is ~~a~~ an income-producing activity separate ~~income-producing activity~~ from the rental, lease, licensing, or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease, or licensing period, gross receipts attributable to this state ~~shall be~~ are measured by the ratio ~~which~~ of the time the property ~~was~~ is physically present or ~~was~~ is used in this state ~~bears~~ to the total time ~~or use of~~ the property is present or used ~~everywhere~~ anywhere during that ~~such~~ period.

      Example: The taxpayer is the owner of 10 railroad cars. During the year, the total of the days during which each railroad car is present in this state is 50 days. The receipts attributable to the use of each of the railroad cars in this state are a separate item of income and shall be determined as follows:

      [(10 x 50)] ÷ (10 x 365)] x Total Receipts = Receipts Attributable to this State
   c. ~~Personal services.~~ Gross receipts for the performance of personal services are attributable to this state to the extent ~~such~~ the services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts ~~for~~ from the performance of ~~such~~ the services ~~shall be~~ are attributable to this state only if the ~~a~~ greater proportion of the services ~~was~~ is performed in ~~the~~ this state, based on costs of performance. Usually, ~~where~~ if services are performed partly within and partly without this state, the services performed in each state ~~will~~ constitute a separate income-producing activity; in such a case the gross receipts ~~for~~ from the performance of services attributable to this state ~~shall be~~ are measured by the ratio ~~which~~ of the time spent ~~in~~ performing the ~~such~~ services in this state ~~bears~~ to the total time spent ~~in~~ performing ~~such~~ the services everywhere. Time spent ~~in~~ performing services includes the amount of time expended in the performance of a contract or other obligation ~~which~~ that gives rise to ~~such~~ the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, ~~as for example~~ such as time expended in negotiating the contract, is excluded from the computations.

      Example 1: The taxpayer, a road show, gives theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

      Example 2: The taxpayer, a public opinion survey corporation, conducts a poll by means of its employees in State X and in this state for the sum of $9,000. The project required 600 hours to obtain the basic data and pre-

pare the survey report. The taxpayer expended 200 of the 600 hours in this state. The receipts attributable to this state are $3,000 [(200 ÷ 600) x $9,000].

R15-2D-807. Consistency and Uniformity in Reporting

A. ~~Consistency and uniformity in reporting.~~

~~1.~~ ~~Year-to-year consistency.~~ ~~In filing returns with this state, if~~ If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

~~2.~~**B.** ~~State-to-state uniformity.~~ If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose ~~in its return to this state~~ the nature and extent of the variance upon request by the Department.

ARTICLE 9. DEPARTURE FROM STANDARD APPORTIONMENT AND ALLOCATION PROVISIONS

R15-2D-901. General

A. ~~In general, if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~

~~1. Separate accounting;~~
~~2. The exclusion of any 1 or more of the factors;~~
~~3. The inclusion of 1 or more additional factors which will fairly represent the taxpayer's business activity in his state; or~~
~~4. The denominator of the apportionment ratio should correspond to the number of factors utilized to fairly represent the taxpayer's business activity in this state. For example, if only 2 factors are used, the denominator is 2.~~
~~5. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

~~**B.**~~ A.R.S. § 43-1148 ~~This Section~~ permits a departure from the allocation and apportionment provisions only in limited ~~and specific~~ cases. A.R.S. § 43-1148 ~~It~~ may be invoked only ~~in specific cases where~~ if unusual fact situations produce incongruous results under the apportionment and allocation provisions contained in A.R.S. Title 43, Chapter 11, Article 4.

B. If a departure from the allocation and apportionment provisions referred to in subsection (A) includes a change in the number of factors, the denominator of the apportionment ratio shall be adjusted to reflect the change.
Example 1: If two equally weighted factors are used, the denominator is two.
Example 2: If two factors are used and one of the factors is double weighted, the denominator is three.

R15-2D-902. Special Provisions for the Property Factor

~~Special rules: property factor.~~ The following special provisions ~~rules are established in respect~~ apply to the property factor of the apportionment formula:

1. If the subrents taken into account in determining the net annual rental rate under R15-2D-605 produce a negative or ~~clearly~~ inaccurate value for any item of property, the Department shall require and the taxpayer shall use another method ~~which~~ that will properly reflect the value of the rented property ~~may be required by the Department or requested by the taxpayer~~. In no case, however, shall ~~such~~ the value be less than an amount ~~which~~ that bears the same ratio to the annual rental rate paid by the taxpayer for ~~such~~ the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.
   Example: The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer shall not be less than 2/10ths of the taxpayer's annual rental rate for the entire year, or $200,000.
2. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for ~~such~~ the property shall be determined on the basis of a reasonable market rental rate for ~~such~~ the property.

R15-2D-903. Special Provisions for the Sales Factor

~~Special rules: sales factor.~~ The following special provisions ~~rules are established in respect~~ apply to the sales factor of the apportionment formula:

1. ~~Where~~ If substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, ~~such~~ those gross receipts ~~shall be~~ are excluded from the sales factor. For example, gross receipts from the sale of a factory or plant ~~will be~~ are excluded.
2. Insubstantial amounts of gross receipts, arising from incidental or occasional transactions or activities, may be excluded from the sales factor, unless ~~such~~ their exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from ~~such~~ transactions such as the sale of office furniture, business automobiles, or other similar items ~~etc~~.
3. ~~Where~~ If the income-producing activity ~~in~~ with respect to business income from intangible personal property can be readily identified, ~~such~~ the income is included in the denominator of the sales factor and, if the income-producing

activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income-producing activity can be readily identified ~~in~~ with respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing, or other use of intangible personal property. ~~Where~~ If business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, ~~such~~ the income ~~cannot~~ is not ~~be~~ assigned to the numerator of the sales factor for any state and ~~shall be~~ is excluded from the denominator of the sales factor. For example, ~~where~~ if business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, the ~~such~~ dividends and interest shall be excluded from the denominator of the sales factor.

4. Items of income that ~~which~~ are not subject to taxation ~~by~~ under A.R.S. Title 43 or judicial decision ~~shall be~~ is excluded from the sales factor. Examples of ~~such~~ these items include controlled corporation dividends, gross-up dividends, Subpart F dividends, and interest from federal obligations.

Editor's Note: The Office of the Secretary of State is republishing the following Notice of Final Rulemaking because of printing errors in the first publication, at 7 A.A.R. 3966, September 7, 2001.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Sections Affected	Rulemaking Action
Article 1	Amend
R20-5-101	Amend
R20-5-102	Repeal
R20-5-102	New Section
R20-5-103	Repeal
R20-5-103	New Section
R20-5-104	Amend
R20-5-105	Repeal
R20-5-105	New Section
R20-5-106	Amend
R20-5-107	Amend
R20-5-108	Amend
R20-5-109	Amend
R20-5-110	Amend
R20-5-112	Amend
R20-5-113	Amend
R20-5-114	Amend
R20-5-115	Repeal
R20-5-115	New Section
R20-5-116	Amend
R20-5-117	Amend
R20-5-118	Amend
R20-5-119	Amend
R20-5-121	Amend
R20-5-123	Amend
R20-5-124	Amend
R20-5-125	Amend
R20-5-126	Amend
R20-5-127	Amend
R20-5-128	Repeal
R20-5-128	New Section
R20-5-129	Amend
R20-5-130	Amend
R20-5-131	Amend
R20-5-133	Amend
R20-5-134	Amend
R20-5-136	Amend

R20-5-137	Amend
R20-5-138	Amend
R20-5-139	Amend
R20-5-140	Amend
R20-5-141	Amend
R20-5-142	Amend
R20-5-143	Amend
R20-5-144	Amend
R20-5-145	Amend
R20-5-146	Repeal
R20-5-147	Amend
R20-5-148	Amend
R20-5-149	Amend
R20-5-150	Amend
R20-5-151	Amend
R20-5-152	Amend
R20-5-153	Amend
R20-5-154	Amend
R20-5-155	Amend
R20-5-156	Amend
R20-5-157	Amend
R20-5-158	Amend
R20-5-159	Amend
R20-5-160	Amend
R20-5-162	Amend
R20-5-163	Amend
R20-5-164	Amend

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

Authorizing statute: A.R.S. § 23-107(A)(1)

Implementing statutes: A.R.S. §§ 23-908(A) and (B), 23-921(B); 23-930(E), 23-961(F), 23-1043.02(F), 23-1043.03(F), and 23-1067

3. The effective date of the rules:

August 17, 2001

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

Notice of Rulemaking Docket Opening: 2 A.A.R. 1107, March 1, 1996

Notice of Formal Rulemaking Advisory Committee: 2 A.A.R. 1109, March 1, 1996

Notice of Rulemaking Docket Opening: 7 A.A.R. 71, January 5, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 12, January 5, 2001

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

Name: Laura L. McGrory, Assistant Chief Counsel, Legal Division

Address: Industrial Commission of Arizona
800 W. Washington, Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

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

The Industrial Commission of Arizona, in cooperation with the Workers' Compensation Rules Advisory Committee, initiated rulemaking to update the language of Article 1 and to improve the clarity and conciseness of the rules. In response to concerns and comments received from the workers' compensation community, amendments are also made that encourage informal resolution of discovery disputes, clarify the right and scope of inspection of Commission claims' files, and address parties' rights and obligations related to payment of disability benefits, issuance of notices, discovery, scheduling of medical examinations, exchange of medical reports, and other rules of procedure governing practice before the Commission in a workers' compensation hearing. The amendments also address the nature and scope of medical record requests, including the fee that may be charged by health care providers for the reproduction of the requested records. The amendments also include approval and practice requirements to maintain a

claims office outside Arizona. The amendments also implement the requirements under A.R.S. § 23-1043.01 pertaining to hepatitis C.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and other supporting material:

None

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

The amendments do not diminish a previous grant of authority of a political subdivision of this state.

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

The amendments concern primarily rules of procedure governing workers' compensation claims before the Industrial Commission of Arizona. The Commission does not anticipate or foresee an economic impact on individuals affected by Article 1 except as a result of amendments found in R20-5-113, R20-5-118, R20-5-128, R20-5-130, R20-5-137, R20-5-149, and R20-5-164 that are more fully described below.

Amendments are made to R20-5-113 that permit a workers' compensation insurance carrier, self-insured employer, and special fund division to refuse or delay payment to a physician for services rendered if the physician fails to submit the report required by this Section. If a physician complies with the requirements of R20-5-113, there is no economic impact and the physician will receive payment for services rendered. Timely submission of a medical report by a physician facilitates timely payment of disability benefits to an injured worker and promotes efficient claims processing by an insurance carrier, self-insured employer, or special fund division. In this regard, the benefits of the rule outweigh the impact that the proposed change may have upon physicians who fail to timely provide the required medical reports.

Amendments are made to R20-5-118 that require a carrier, self-insured employer, and special fund division to provide a claimant a copy of the medical report upon which a notice or determination is predicated. To the extent that a carrier, self-insured employer, and special fund division is not already providing the report (which is required to be provided upon request from a claimant), costs associated with the copying of these medical reports are expected to be incurred. The costs are anticipated to be minimal to moderate (zero to $2,000) depending on the number of claims processed by the carrier, self-insured employer, and special fund division.

Amendments are made to R20-5-128 that limit the charge that physicians, physical therapists, and occupational therapists "health care providers" can bill for copying medical records to $.25 a page and $10 dollars an hour for associated clerical costs. Some health care providers charge more than the charges set forth in R20-5-128. Some providers charge less. Some providers do not charge claimants anything for copying the claimant's medical records. The Commission believes that the limitation set forth in Section 128 is reasonable and reflects the value of services rendered when copies are made. From this perspective, there is no economic impact upon the health care provider as a result of the amendment to R20-5-128. On the other hand, if the impact of the rule is evaluated by comparing the charges set forth in R20-5-128 to the copy costs actually charged, some health care providers may experience an economic impact as a result of the rule change. From this perspective, the Commission believes that health care providers who charge a flat fee for the copying of records may experience a greater impact than those who charge per page. For those who charge a flat fee and accustomed to charging $30 to $40 for the reproduction of records (whether one page is produced or 200 pages are produced), the economic impact is expected to be none to moderate (receives 100 percent to 25 percent of current charges) depending on the number of records requested. For example, if two pages of records are copied, the health care provider would be paid $10.50 under the new rule (receives 25 percent to 30 percent of current charges if flat fee is $30 to $40). On the other hand, if 250 pages are copied, then the provider would be paid $62.50 plus $10 an hour for clerical time (more than the provider's current charges). For those who currently charge per page, the economic impact is expected to be minimal (receives 100 percent to 75 percent of current charges) as the current charges are comparable to the limitation set forth in R20-5-128.

The Commission believes that the amendment to R20-5-128 does not impose an unfair burden on health care providers. The cost limitation set forth in this Section reflects what is:

1. Required under the Industrial Commission's Physician Fee Schedule,
2. Considered "reasonable" in the context of subpoenas under A.R.S. § 12-351,
3. Consistent with the current copying charges of some health care providers, and
4. Consistent with generally accepted copying charges for public records.

By limiting copying charges, parties to Industrial Commission proceedings have increased access to records that the law entitles them to receive. This is particularly important since the injured worker's claim to medical and compensation benefits often depends on the information contained in medical reports. The Industrial Commission further believes that increasing access to medical records required for the discovery and litigation of workers' compensation cases constitutes a benefit that outweighs the impact experienced by those health care providers who currently charge more than $.25 per page and $10 per hour in associated clerical costs for the reproduction of medical records.

Under R20-5-130, workers' compensation carriers and self-insured employers (directly or through third party processors) have the right to request permission to process claims from an out-of-state claims office. Presently, (as well as

under the amended rule), a carrier or self-insured employer is required to maintain an office in Arizona where workers' compensation claims files are maintained and from where claims are processed and paid. The current rule (and amended rule) does not permit the processing and paying of claims outside Arizona without the permission of the Commission. The present rule does not contain the criteria for the granting of that permission, except to say that permission shall not be unreasonably withheld if claims are being processed in an efficient and timely manner under the applicable laws and rules.

For at least the past 10 years, the practice of the Commission has been to grant permission to process claims from an out-of-state office if the carrier, self-insured employer, or third party processor could process its claims from the out-of-state office without cost to a claimant. This required the carrier or self-insured employer to set up and maintain a toll-free telephone number to allow a claimant to call the carrier or self-insured employer without incurring long distance charges. The amendment to the current rule incorporates the current practice of the Commission. Consequently, all carriers, self-insured employers, and third party processors that are processing claims from an out-of-state office currently maintain a toll-free telephone number.

The real economic impact from this requirement is from the long distance charges incurred from claimants calling the carrier or self-insured. The larger companies will incur more long distance charges because they process more claims. Conversely, the smaller companies will incur less. Presently, the companies that process the largest number of out of state claims are notified of approximately 5,000 claims per year. Other companies' process as few as seven Arizona claims per year. Whatever may be the impact of maintaining a toll-free telephone number, that cost is unlikely to exceed the cost of setting up and maintaining an office in Arizona to process claims. Carriers, self-insured employers, and third-party processors request permission to process claims out-of-state because it is economically advantageous for them to do so. By processing claims from an out-of-state office, the carrier, self-insured employer, or third party processor saves the cost of renting or buying office space in Arizona, hiring staff to work in the Arizona office, and all the other expenses that go along with running a business in Arizona. Consequently, regardless of what the long distance charges may be, a carrier, self-insured employer, or third party processor is going to save money by processing claims out-of-state.

The amendment to R20-5-130 also requires that the toll-free number be printed on the notices and other determinations issued from the out-of-state office. Currently notices are required (under R20-5-106) to contain both the name and number of the issuing party. Therefore, the requirement under R20-5-118 is not a new requirement, as much as a clarification of which number is required to be printed on the notices or determinations issued. With respect to the majority of carriers and self-insured employers that are currently processing claims from an out-of-state office, the Commission does not believe that there is any economic impact as a result of the requirements of R20-5-130. For the few carriers or self-insured employers that have not printed their toll-free number on their forms, they may experience minimal economic impact (less than $200) due to the reprinting or reformatting of forms.

The Commission believes that the economic impact associated with the amendment to R20-5-130 is outweighed by the advantage of having such a number. In addition to the money saved by not having to maintain an Arizona office, a toll free telephone number increases access of injured workers and client employers to the carrier, self-insured employer, or third party processor by eliminating long distance telephone charges.

R20-5-137 is amended to shift the burden of serving parties with a copy of a request for hearing from the Commission to the party filing the request for hearing. Since the parties will eventually receive notice from the Commission that a request for hearing has been filed (via a Notice of Hearing issued by an administrative law judge), the Commission does not consider it necessary to place a separate and additional notification burden upon the Commission. The estimated cost for the Commission to serve parties with copies of requests for hearing is $6,900 annually. This cost is being shifted and spread among claimants, worker's compensation insurance carriers, and self-insured employers. The Commission believes that approximately 80 percent to 90 percent of hearing requests that are filed with the Commission are filed by claimants. For the claimant who protests a notice by filing a request for hearing, the claimant will incur the costs of copying and serving the request for hearing upon the other parties to the case, a cost not anticipated to exceed $.75 (a minimal impact) if only one copy is required to be served. The cost will increase accordingly if there are multiple parties to the case. Currently, some claimants are already serving copies of their requests for hearing upon the parties. Therefore, they will incur no additional costs.

For worker' compensation insurance carriers and self-insured employers (including third party processors who may be processing claims on behalf of an insurance carrier or self-insured employer), the cost is greater since these entities are processing multiple claims (thus having the potential to file and service multiple hearing requests). The cost to copy and serve requests for hearing filed by these entities is expected to be less than $25 per year.

The Commission considers the reallocation of the burden to serve a copy of a request for hearing fair. As stated previously, the Commission already provides all parties with notice of a hearing set in response to the request for hearing filed with the Commission. The benefit to the Commission in terms of dollars and resources saved outweighs the minimal cost impact to employees, workers compensation insurance carriers, and self-insured employers.

R20-5-149 is amended to enable a judge to assess hearing costs against a party who fails to appear at hearing without notice to the judge. These hearing costs could include the appearance fee of a court reporter ($20-$40), as well as appearance fees for witnesses (up to $110 for a physician). The ability to impose hearing costs (which is unlikely to exceed $150 for a single hearing) encourages parties to provide timely notice of an inability to appear at hearing. If

such notice is provided, the judge has the ability to cancel the hearing, thus avoiding unnecessary hearing costs for the Administrative Law Judge Division. The Commission believes that the avoidance of unnecessary hearing costs constitutes a benefit to the agency that outweighs the minimal economic impact that may be incurred by a party.

R20-5-164 conforms the requirements of this Section to the requirements of 29 CFR 1910.1030 by requiring an employer to pay for the testing required by A.R.S. § 23-1043.02. R20-5-164 imposes no additional burden on employers, but clarifies the obligation of employers.

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

In addition to the miscellaneous correction of typographical and punctuation errors and technical changes suggested by Council staff, the Commission made the following changes to the proposed rules. Language that has been added after the proposed rules were published are indicated in this paragraph by bold underlined text. Language that has been stricken from the proposed rules are indicated in this paragraph by bold strike outs. The Commission's reason for the change is indicated in italics.

R20-5-112. Physician's Initial Report of Injury

C. If an injured worker uses form 102 to initiate a claim, either the injured worker or the injured worker's authorized representative shall sign the worker's portion of form 102. ~~If signed, the injured worker or the injured worker's authorized representative shall comply with R20-5-107. Form 102 requests the following:~~

The second sentence has been removed as it is unnecessary in view of the language found in R20-5-107 and to eliminate any confusion that may arise from the use of the words "if signed." Language was added to the first sentence to clarify that a signature is required if form 102 is being used to initiate a workers' compensation claim.

R20-5-117. Medical, Surgical, Hospital, and Burial Expenses

A. A carrier, self-insured employer, or special fund division, shall pay bills for medical, ~~Medical~~, surgical, and hospital benefits provided under A.R.S. § 23-901 et seq. ~~shall~~ according to applicable ~~be paid in accordance with the various~~ medical and surgical fee schedules adopted by the Commission and in effect at the time the services were ~~are~~ rendered. The physician, ~~Physician,~~ nursing, hospital, drug or other medical services provider ~~bills~~ shall itemize and submit a bill ~~be itemized and presented~~ for payment only to the responsible carrier, self-insured employer, or special fund division ~~employer, or if he is insured for medical, surgical or hospital benefits, to his insurance carrier~~.

B. A ~~The~~ claimant ~~injured employee~~ shall not be responsible to pay ~~for~~ any disputed amounts between the medical provider ~~of service~~ and the ~~insurance~~ carrier, self-insured employer, or special fund division. ~~or employer concerning these fees~~.

Subsection (A) provides that a medical provider shall submit its bill for services to the responsible carrier, self-insured employer, or special fund division. Subsection (B) provides that a claimant shall not be responsible to pay any disputed amounts between the medical provider and the carrier, self-insured employer, or special fund division. The intent of these subsections is to ensure that a claimant is not subjected to balance billing or any other problem associated with the payment for medical, surgical, or hospital services provided to an injured worker. To improve the clarity of this rule, the Commission inserted the word "only" into subsection (A) to make clear that a provider may only submit its bills to the entity responsible to pay the bill.

11. A summary of the principal comments and the agency response to them:

R20-5-104. Address of Claimant and Uninsured Employer

Principal Comment: R20-5-104 appears to have changed the notification of a change in address requirement from a continuing duty to a one-time duty.

Agency Response: The Commission disagrees. The change in subsection (A) is a non-substantive change intended to make the language of that subsection more clear and concise. The language is written in the active voice that states that an applicant is required to advise of the claimant's current address. If the claimant moves, then the new address becomes the current address, thus triggering the requirement to notify under R20-5-104.

R20-5-112. Physician's Initial Report of Injury

Principal Comment: The change in subsection (C) makes the employee's signature optional instead of mandatory. The signature should be mandatory.

Agency Response: The permissive language found in subsection (C) refers only to who may sign the worker's portion of the form, not that the signing is optional. In this regard, this subsection provides that a worker or the workers' authorized representative may sign the form. To eliminate any confusion that arises from the language "if signed," found in the second paragraph of subsection (C), the second sentence has been removed as it is unnecessary in view of the language found in R20-5-107. Additional language was added to the first sentence to clarify that a signature is required if form 102 is used to initiate a workers' compensation claim.

R20-5-113. Physician's Duty to Provide Signed Reports; Rating of Impairment of Function; Restriction Against Interruption or Suspension of Benefits; Change of Physician

Principal Comment: The language in subsection (B) should require a physician to rate the percentage of impairment. If a physician is going to treat a patient for a worker's compensation injury, then the physician should rate the impairment instead of having another physician doing it.

Agency Response: Subsection (B) does require a physician to determine whether a patient has sustained a permanent impairment related to the industrial injury. The permissive language found in subsection (B) refers to the use of the American Medical Association Guides to the Evaluation of Permanent Impairment in rating that impairment.

R20-5-115. Request to Leave the State

Principal Comment: The effective date of a request to leave the state should be the date the Commission approves the request.

Agency Response: This comment reflects the principle set forth in *Hurley* v. *Industrial Commission*, 140 Ariz. 225, 681 P. 2d 377 (1984) (permission to leave the state relates back to date Commission first acted). In 1987, however, the Legislature amended A.R.S. § 23-1071 to provide that the effective date of a request to leave the state is the date an employee requests the written approval (when the Commission initially denied the request, but an administrative law judge (ALJ) subsequently approves the request). As a result, *Hurley* no longer controls in that set of circumstances.

The amendment to A.R.S. § 23-1071 (like the *Hurley* case) only addresses the effective date of a request to leave the state when an ALJ approves a request to leave the state that was initially administratively denied by the Commission. Left unanswered is the effective date of an order approving or disapproving a request to leave the state when no appeal is taken. To promote uniformity and consistency with the applicable statute, the Commission amended R20-5-115 to provide that the effective date of a request to leave the state is the date an employee first requests the approval.

R20-5-117. Medical, Surgical, Hospital, and Burial Expenses

Principal Comment: This rule should expressly prohibit a medical provider from billing a claimant for charges not paid for by a carrier, self-insurer, or special fund division.

Agency Response: Subsection (A) provides that a medical provider shall submit its bill to the carrier, self-insured employer, or special fund division. Subsection (B) provides that a claimant shall not be responsible to pay any disputed amounts between the medical provider and the carrier, self-insured employer, or special fund division. The intent of these subsections was to ensure that a claimant is not subjected to the kind of problems described by the individual making this comment. To improve the clarity of this rule, the Commission inserted language into subsection (A) that a provider may submit its bills only to the entity responsible to pay the bill.

General comment applicable to Article as a whole:

Principal comment: Use of "carrier, self-insured employer, and special fund division" is not consistent throughout the rules. There are some rules where the list of three should have been, but was not, included.

Agency response: The comment fails to state the rules where the "standardized list" should have been included. When referring to this "standardized list", the Commission assumes that the comment refers to the failure to include a reference to the "special fund division" in certain rules throughout Article 1. The Commission added a reference to the special fund division throughout the rules as it deemed appropriate, giving consideration to the fact that the special fund division is a division of the Commission, is processing "no insurance claims", and is not a carrier. In view of its unique role and function, it was unnecessary and, in some instances, inappropriate to reference the special fund division in each rule where a carrier is referenced.

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

None

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

United States Abridged Life Tables, 1996, National Vital Statistics Reports, Vol. 47, Number 13. Incorporated by reference in R20-5-121(B).

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. ~~RULES OF PROCEDURE FOR WORKERS' COMPENSATION HEARINGS BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA~~ WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section

ARTICLE 1. ~~RULES OF PROCEDURE FOR WORKERS' COMPENSATION HEARINGS BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA~~ WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-101. Notice of Rules; Part of Record; Effective Date

A. This Article applies ~~These rules apply~~ to all actions and proceedings before the Commission ~~pertaining to claims~~ resulting from:

1. Injuries ~~injuries~~ that ~~which~~ occurred on or after January 1, 1969; and ~~to~~
2. Petitions to Reopen or Petitions for Readjustment or Rearrangement of Compensation filed on or after that date.

B. This Article is ~~and shall be deemed~~ a part of the record in each ~~such~~ action or proceeding without formal introduction of or reference to the Article, ~~the same~~.

C. The Commission deems all ~~All~~ parties ~~are deemed~~ to have knowledge of this Article. ~~these rules~~.

D. The Commission shall provide a copy of this Article ~~the rules will be supplied~~ upon request to any person free of charge ~~by the Commission~~.

E. This Article is effective as provided in A.R.S. § 41-1031. ~~These rules shall become effective March 1, 1987, and apply to all hearings held thereafter.~~

R20-5-102. ~~Location of Office and Office Hours~~ Definitions

~~The main office of The Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from eight o'clock A.M. until five o'clock P.M. every day except Saturdays, Sundays and legal holidays.~~

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A. R. S. Title 23, Ch. 6, Articles 1 through 11.

"Authorized representative" means an individual authorized by law to act on behalf of a party who files with the Commission a written instrument advising of the individual's authority to act on behalf of the party.

"Carrier" or "insurance carrier" means the state compensation fund and every insurance carrier authorized by the Arizona Department of Insurance to underwrite workers' compensation insurance in Arizona.

"Claimant" means an employee who files a claim for workers' compensation.

"Filing" means actual receipt of a report, document, instrument, videotape, audiotape, or other written matter at a Commission office during office hours as set forth in R20-5-103.

"Physician" means a licensed physician or other licensed practitioner of the healing arts.

"Self-insured employer" means an employer or workers' compensation pool granted authority by the Commission to self- insure for workers' compensation.

"Uninsured employer" or "noncomplying employer" means an employer that is subject to and fails to comply with A.R.S. §§ 23-961 or 23-962.

"Working days" means all days except Saturdays, Sundays, and state legal holidays.

R20-5-103. ~~Time for Filing; Computation; Responses to Motion~~ Location of Industrial Commission Offices and Office Hours

~~**A.** All pleadings, reports, documents, instruments, and other written matters shall be filed with the Commission within the time required by law and these rules. The day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal hol-~~

~~iday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. Where a matter is required to be filed within a designated period of time prior to a hearing, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs to the next earlier day which is not a Saturday, Sunday, or a holiday. When the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Matters filed at any office of the Commission shall be considered as filed at the main office for purposes of computation of time.~~

~~**B.** Any party or any party sought to be joined may respond to any motion filed pursuant to these rules by filing a response to the motion within ten days after the motion is filed.~~

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays, and state legal holidays.

R20-5-104. Address of Claimant and Uninsured Employer

A. A ~~It shall be the duty and obligation of a~~ claimant shall advise ~~to keep~~ the ~~The Industrial~~ Commission ~~of Arizona~~ and carrier or self-insured employer ~~advised~~ of the claimant's current mailing ~~his~~ address and place of residence. If a claimant files a workers' compensation claim against an uninsured employer, the claimant shall advise the special fund division of the claimant's current mailing address and place of residence.

B. An uninsured employer against whom a claimant files a workers' compensation claim shall advise the special fund division of the uninsured employer's current mailing address and place or places of residence.

C. Providing the ~~The~~ address of a ~~the~~ claimant's or uninsured employer's ~~his~~ attorney or authorized representative is ~~shall~~ not ~~be~~ sufficient to meet the requirements of this Section ~~rule~~.

R20-5-105. ~~Definitions~~ Filing Requirements; Time for Filing; Computation of Time; Response to Motion

~~In these Rules of Procedure, unless the context otherwise requires, the following words and terms shall have the following meanings:~~

~~1. "Authorized representative" means only those persons authorized by law, including attorneys, to appear before the Commission who have filed with the Commission a written instrument advising of their authority to act on behalf of a party.~~

~~2. "Insurance carrier" or "carrier" means the State Compensation Fund and every insurance carrier authorized by the Department of Insurance to underwrite workers' compensation insurance in Arizona. It also applies to employers who have been granted authority to act as a self-insurers by the Commission.~~

~~3. "Filing" means actual receipt of the document, instrument, or matter at the offices of the Commission during its regular hours of business on a day it is open for the transaction of business.~~

~~4. "Physician" means any licensed physician or other license practitioner of the healing arts.~~

~~5. "Working days" means all days except Saturdays, Sundays, and state legal holidays.~~

A. A report, document, instrument, videotape, audiotape, or other written matter required to be filed with the Commission under A.R.S. § 23-901 et seq. and this Article shall be filed at a Commission office within the time required by law and this Article.

B. For purposes of computing time under this Article, the following applies:

1. The Commission shall not include in the computation of time the day of the act or event from which the designated period begins to run.
2. The Commission shall include in the computation of time the last day of the designated period, unless the last day is a Saturday, Sunday, or state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state legal holiday.
3. If this Article or other law requires that a report, document, instrument, videotape, audiotape, or other written matter be filed within a designated period of time before hearing, the Commission shall not include the day of the act or event from which the designated period of time begins to run. The Commission shall include the last day of the designated period unless that day is a Saturday, Sunday, or state legal holiday, in which event the period runs to the end of the next day that is not a Saturday, Sunday, or state legal holiday.
4. If the period of time prescribed is less than 11 days, the Commission shall not include intermediate Saturdays, Sundays, or state legal holidays in the computation of time.

C. The Commission shall deem a report, document, instrument, videotape, audiotape, or other written matter filed at the Tucson office as filed at the main office for purposes of computing time.

D. A person upon whom a motion to join is filed under this Article may file a response to the motion within 10 days after the motion is filed.

E. The Commission shall not consider a discovery motion unless the moving party attaches a separate statement to the discovery motion certifying that after good faith efforts to do so, the moving party has been unable to satisfactorily resolve the matter giving rise to the discovery motion with the opposing party.

R20-5-106. Forms Prescribed by the Commission

~~The Commission shall prescribe and provide forms required by the provisions of the Workers' Compensation Law and by this Article. The prescribed forms are available from the Commission upon request.~~

A. The following forms shall be used when applicable:

1. Employer's report of industrial injury (form 101) shall contain:
   a. Employee, employer, and carrier identification;
   b. Description of employment;
   c. Description of accident and injury;
   d. Description of medical treatment received by employee;
   e. Employee's wage data;
   f. Date, signature, and title of employer or the employer's representative; and
   g. Statement doubting the validity of the claim, if the employer doubts the validity of the claim.
2. The physician's portion of the worker's and physician's report of injury (form 102) shall contain:
   a. Name and address of physician;
   b. Information regarding preexisting conditions;
   c. Information regarding the industrial injury, treatment, and prognosis;
   d. Statement authorizing the attachment of a medical report that contains the information required in form 102; and
   e. Physician's signature and date.
3. Notice of supportive medical benefits (form 103) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Description of authorized medical benefits;
   c. Date the notice is mailed;
   d. Name and telephone number of the individual issuing the notice; and
   e. Statement regarding reopening and appeal rights including filing requirements.
4. Notice of claim status (form 104) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Status of the claim;
   c. Date the notice is mailed;
   d. Name and telephone number of the individual issuing the notice; and
   e. Statement of a party's hearing and appeal rights including filing requirements.
5. Notice of suspension of benefits (form 105) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Effective date of the suspension;
   c. Reasons for the suspension;
   d. Date the notice is mailed;
   e. Name and telephone number of the individual issuing the notice; and
   f. Statement of a party's hearing and appeal rights including filing requirements.
6. Notice of permanent disability or death benefits (form 106) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Applicable statutory authority under which compensation is paid;
   c. Disability and compensation information;
   d. Date the notice is mailed;
   e. Name and telephone number of the individual issuing the notice; and
   f. Statement regarding hearing and appeal rights including filing requirements.
7. Notice of permanent disability and request for determination of benefits (form 107) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Type of disability;
   c. Applicable statutory authority for designated disability;
   d. Designation of dependents where death is involved;
   e. Designation of advanced payments and amount of the advance;
   f. Date the notice is mailed; and
   g. Name and telephone number of the individual issuing the notice.
8. Carrier's recommended average monthly wage calculation (form 108) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Employment and wage history;
   c. Designation of dependents; and
   d. Carrier's calculations for the recommended average monthly wage and the basis for the calculation.
9. Notice of permanent compensation payment plan (form 111) shall contain:
   a. Employee, employer, and carrier identification;

b. Amount of permanent compensation and description of payment plan;
c. Name of the responsible entity contracted by the carrier to administer the payment plan;
d. Statement that the carrier remains the responsible party for payment;
e. Statement regarding supportive care and reopening rights;
f. Date the notice is mailed; and
g. Name and telephone number of the individual issuing the notice.

10. Report of insurance coverage (form 0006) shall contain:
    a. Name and address of the carrier;
    b. Legal name of entity that the carrier insures;
    c. All other insured names or subsidiary entities under which the carrier's insured does business in Arizona;
    d. Address of all insured entities with insurance policy information for each address; and
    e. Employer Identification Number (EIN), Taxpayer Identification Number (TIN), or Federal Identification Number (FIN) assigned to each insured person or entity.
11. Report of significant work exposure to bodily fluids shall contain:
    a. The requirements set forth in A.R.S. §§ 23-1043.02(B) and 23-1043.03(B);
    b. Employee identification;
    c. Employer identification;
    d. Details of the exposure including:
        i. Date of exposure;
        ii. Time of exposure;
        iii. Place of exposure;
        iv. How exposure occurred;
        v. Type of bodily fluid or fluids;
        vi. Source of bodily fluid or fluids;
        vii. Part or parts of body exposed to bodily fluid or fluids;
        viii. Presence of break or rupture in skin or mucous membrane; and
        ix. Witnesses (if known); and
    e. Dated signature of employee or the employee's authorized representative.

C. The following forms may be used:

1. The workers' portion of the worker's and physician's report of injury (form 102) requests:
    a. Employee, employer, insurance carrier, and physician identification;
    b. Description of the accident, including date of injury; and
    c. Date and signature of the employee or the employee's authorized representative.
2. Worker's report of injury (form 407) requests:
    a. Employee and employer identification;
    b. Job title;
    c. Employment description;
    d. Employee's wage data;
    e. Date of injury;
    f. Accident and injury descriptions;
    g. Medical treatment information;
    h. Information concerning prior injuries of the employee;
    i Disability income; and
    j. Date and signature of the employee or the employee's authorized representative.
3. Worker's annual report of income (form 110-A) requests:
    a. Employee, employer, insurance carrier, and claim identification;
    b. Employment and wage history for the preceding 12 months;
    c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information; and
    d. Statement that failure to submit an annual report of income may result in a suspension of benefits by the carrier or self-insured employer.
4. Notice of intent to suspend (form 110-B) requests:
    a. Employee, employer, insurance carrier, and claim identification;
    b. Employment and wage history for the preceding 12 months;
    c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information;
    d. Statement that failure to submit an annual report within 30 days of the date of the notice shall result in a suspension of benefits by the carrier or self-insured employer.
5. Request for hearing requests:

a. Names of the employee, employer, and insurance carrier;
b. Claim identification
c. Identification of the award, notice, order, or determination protested and reason(s) for the protest;
d. Estimated length of time for hearing and city or town in which hearing is requested;
e. Name and address of any witness for whom a subpoena is requested; and
f. Date and signature of party or the party's authorized representative.

6. Petition to reopen requests:
   a. Names of the employee, employer, and insurance carrier;
   b. Claim identification;
   c. Identification or description of the new, additional, or previously undiscovered temporary or permanent disability or medical condition justifying the reopening of the claim; and
   d. Employee's medical and employment history.
7. Petition for rearrangement or readjustment of compensation requests:
   a. Names of the employee, employer, and insurance carrier;
   b. Claim identification;
   c. Income and employment history;
   d. Medical history; and
   e. Statement of the basis for the increase or decrease in earning capacity.
8. Claim for dependent's benefits-fatality form requests:
   a. Identification of dependent filing claim;
   b. Identification of deceased;
   c. Date of death;
   d. Date of injury, if different than date of death;
   e. Name and address of employer at time of deceased's death;
   f. Statement of cause of death;
   g. Names and addresses of healthcare providers rendering treatment to deceased in two years before death;
   h. Conditions treated by healthcare providers in the two years before deceased's death;
   i. If claim is for spousal benefits, the form requests:
      i. Name, address, and date of birth of spouse;
      ii. Copy of marriage certificate;
      iii. Date and place of marriage to deceased;
      iv. History of prior marriages of deceased and deceased's spouse, including copies of divorce decrees; and
      v. Statement of living arrangements at time of deceased's death, including reason for living apart at time of death, if applicable;
   j. If claim is for a dependent child, the form requests:
      i. Name, date of birth, and address of child at time of deceased's death;
      ii. List of children in care and custody of current spouse; and
      iii. Statement of whether unborn child is expected and date expected;
   k. If claim is for dependent other than a child, the form requests:
      i. Name and address of other dependent,
      ii. Relationship of other dependent to deceased, and
      iii. Statement of the nature and extent of dependency; and
   l. Date, telephone number, and signature of dependent or authorized representative of dependent.
9. Request to leave the state form requests:
   a. Employee, insurance carrier, and claim identification;
   b. Reason for requesting to leave Arizona;
   c. Dates leaving and returning to Arizona;
   d. Out-of state address;
   e. Name and telephone number of attending physician; and
   f. Date and signature of the employee or the employee's authorized representative.
10. Request to change doctors form requests:
    a. Employee, insurance carrier, and claim identification;
    b. Reason for requesting change of doctor;
    c. Name and phone number of claimant's current doctor;
    d. Name and phone number of doctor claimant requests to change to; and
    e. Date and signature of the employee or the employee's authorized representative.
11. Complaint of bad faith and unfair claim processing practices requests:
    a. Employee, employer, and insurance carrier identification;
    b. Description of the alleged bad faith or unfair claim processing practices;

c. Date of the complaint; and
d. Name, address, and telephone number of the person signing the complaint.

12. Certification of employer's drug and alcohol testing policy requests:
    a. Employer's certification as described under A.R.S. § 23-1021 (F);
    b. Name and federal identification number of the employer; and
    c. Name of all subsidiaries and locations of the employer.

D. Optional use of a form described in subsection (C) does not affect any requirement under the Act or this Article.

E. Forms or format for the forms described in this Section are available from the Commission.

F. Forms prescribed under this Section shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

R20-5-107. Manner of Completion of Forms and Documents

~~Prescribed forms must be filled out legibly, either in ink or by typewriter. All reports or instruments required to be signed shall be signed by the party or by the party's authorized representative, and typewritten or stamped signatures will not be accepted. Filing of an incomplete form or an instrument other than a form when a form is required, within the prescribed time period, will constitute a timely filing if the party complies with these rules by filing a properly completed and executed form within 14 days of the date notice was given by the Commission that the form was incomplete.~~

A. An individual completing a form or document shall fill out the form or document ~~Prescribed forms must be filled out legibly, either~~ in ink or by typewriter.

B. A party or a party's authorized representative shall sign any form or document that is ~~All reports or instruments~~ required by the Act, this Article, or other law to be signed. ~~shall be signed by the party or by the party's authorized representative, and~~

C. Unless otherwise provided in this Article, if a party is required to sign a form or document, the Commission shall not accept a typewritten name or stamped signature. ~~signatures will not be accepted.~~

D. If, within the time period prescribed by law, a party files ~~Filing of~~ an incomplete form or document, or files an instrument other than a form or document when a form or document is required, the Commission shall serve notice to the party that the form or document fails to comply with this Section. ~~Within the prescribed time period,~~ The Commission deems the report or document timely filed ~~will constitute a timely filing~~ if the party files ~~complies with these rules by filing~~ a properly completed and signed ~~executed~~ form or document within 14 days after the Commission serves the notice described in this subsection. ~~of the date notice was given by the Commission that the form was incomplete.~~

R20-5-108. Confidentiality of a Commission Claims File; Reproduction and Inspection of a Commission Claims File ~~Files~~

A. Except as provided in this Section, a ~~The~~ claims file ~~files~~ maintained by the Commission is ~~and all matters contained therein shall be considered~~ private and confidential and the Commission shall not make the claims file available for inspection and copying. For purposes of this Section, "claims file" means the official record maintained by the Commission for a claimant's industrial injury including the worker's report of injury, employer's report of injury, worker and physician's report of injury, and all other reports, records, instruments, videotapes, audiotapes, transcripts, and other matters scanned or otherwise placed into the file. ~~and shall be available for inspection and copying only by an interested party to a proceeding before the Commission or the party's duly authorized representative~~.

B. Except as provided in subsections (D) and (E), the Commission shall make a Commission claims file ~~Claims files of the Commission~~ relating to a current ~~present~~ or prior claim ~~claims~~ of a claimant ~~an employee shall be~~ available for inspection and copying by any party to any proceeding currently ~~presently~~ or previously before the Commission involving the same claimant ~~employee~~.

C. Except as provided in subsections (D) and (E), the Commission shall not make a Commission claims file ~~The Commission's claims files shall be~~ available to a non-party for ~~copying and~~ inspection and copying unless the Commission receives ~~pursuant to~~ a court order or written authorization signed by the affected claimant or the affected claimant's authorized representative. ~~or subpoena~~

D. The Commission shall make a transcript contained in a Commission claims file available for inspection and copying if:
1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
2. The transcript concerns a hearing related to a claim that is not in litigation. ~~Orders and awards of the Commission or an administrative law judge are matters of public record~~

E. The Commission shall make a transcript contained in a Commission claims file available only for inspection if:
1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
2. The transcript concerns a hearing related to a claim currently in litigation.

~~E.~~F. The Commission shall provide copies ~~Copies may be furnished upon request~~ at a charge of $.25 per page. ~~Copies of transcripts of hearings will not be reproduced, but will be available for inspection~~.

~~F.~~G. A Commission claims file ~~The files of the Commission~~ shall not be removed ~~taken~~ from a Commission ~~the~~ office ~~of the Commission~~ unless in the custody of an authorized representative of the Commission.

~~G. The worker's report of injury requests the following:~~

1. Employee and employer identification;
2. Job Title;
3. Employment description;
4. Wage data;
5. Date of injury;
6. Accident and injury descriptions;
7. Medical treatment information;
8. Prior injury information;
9. Disability income;
10. Date and signature of the employee or the employee's authorized representative.

H. The employer's report of industrial injury requests the following:

1. Employee, employer, and carrier identification;
2. Employment description;
3. Industrial accident description;
4. Injury description;
5. Medical treatment information;
6. Employee's wage data;
7. Name and title of employer or the employer's representative with date of report;
8. If the validity of the claim is doubted, a statement shall be included setting forth the basis thereof.

I. The carrier's recommended average monthly wage calculation shall contain the following:

1. Employee, employer, insurance carrier and claim identification;
2. Employment and wage history;
3. Dependents information;
4. Carrier's calculations concerning the recommended average monthly wage and the basis thereof.

J. The notice of supportive medical benefits form shall contain the following:

1. Employee, employer, insurance carrier and claim identification;
2. Description of authorized medical benefits;
3. Date the notice is mailed;
4. Name and telephone number of the issuing party;
5. Statement regarding reopening and appeal rights with time designations as provided by law.

K. The worker's annual report of income requests the following:

1. Employee, employer, insurance carrier and claim identification;
2. Employment and wage history for the preceding 12 months;
3. Date and signature of the employee or the employer's authorized representative attesting to the truthfulness of the employment and wage information.
4. A statement that failure to submit an annual report of income may result in a suspension of benefits.

L. The notice of intent to suspend requests the following:

1. Employee, employer, insurance carrier and claim identification;
2. Employment and wage history for the preceding 12 months;
3. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information;
4. A statement that failure to submit an annual report within 30 days of the date of the notice shall result in a suspension of benefits.

M. The notice of suspension of benefits shall contain the following:

1. Employee, employer, insurance carrier and claim identification;
2. Effective date of the suspension;
3. Reasons for the suspension;
4. Date the notice is mailed;
5. Name and telephone number of the issuing party;
6. Statement regarding hearing and appeal rights with time designations as provided by law.

N. The notice of permanent disability or death benefits shall contain the following;

1. Employee, employer, insurance carrier and claim identification;
2. Applicable statutory authority;
3. Disability and compensation information;
4. Date the notice is mailed;
5. Name and telephone number of the issuing party;
6. Statement regarding hearing and appeal rights with time designations as provided by law.

O. The notice of permanent disability and request for determination of benefits shall contain the following:

1. Employee, employer, insurance carrier and claim identification;

2. ~~Type of disability;~~
3. ~~Applicable statutory authority;~~
4. ~~Dependent information where death is involved;~~
5. ~~Advanced payments and the basis thereof;~~
6. ~~Date the notice is mailed;~~
7. ~~Name and telephone number of the issuing party.~~

~~P.~~ ~~The notice of permanent compensation payment plan shall contain the following:~~

1. ~~Employee, employer and carrier identification;~~
2. ~~Amount of permanent compensation and description of payment plan;~~
3. ~~Name of the responsible entity contracted by the insurance carrier to administer the payment plan;~~
4. ~~Statement that the carrier remains the responsible party for payment;~~
5. ~~Statement regarding supportive care and reopening rights;~~
6. ~~Date the notice is mailed;~~
7. ~~Name and telephone number of the issuing party.~~

R20-5-109. ~~Microfilmed Files~~ Admission into Evidence of Documents Contained in a Commission Claims File

A. If a party or an administrative law judge considers a document ~~If additional documents~~ contained in a Commission claims file, including a transcript ~~transcripts~~ of a prior proceeding, ~~proceedings, are~~ ~~considered~~ necessary or appropriate for ~~administrative or formal~~ hearing purposes ~~by any of the interested~~ ~~parties~~, the administrative law judge shall receive a copy of the document into evidence if the document is otherwise admissible.

B. With the permission of the administrative law judge, instead of submitting a copy of the document into evidence, a party may refer to the document's location on the Commission's optical disk imaging system by providing an accurate description of the document that includes the claimant's claim number and image document identification number the Commission assigns to the document. ~~such documents shall be obtained from the Commission microfilm claims file in accordance with the provisions of R20-5-108 and may be submitted in evidence.~~

R20-5-110. ~~Employer's Report; Report of Fatality~~ Employer Duty to Report Fatality

If ~~Every employer, immediately upon the death of~~ an employee dies as a ~~the~~ result of an injury by accident arising out of and in the course of ~~his~~ employment, the employer shall report the ~~such~~ death to the Commission's claims division ~~Commission~~ by telephone, ~~or~~ telegram, or electronic filing, no later than the next business day following the death. The report shall state ~~stating~~ the name of the employee, when, how, and where the accident occurred, and the nature of the condition causing the accident. This Section does not limit or affect an employer's duty to report a death to the Arizona Occupational Safety and Health Division of the Commission as required under R20-5-637.

R20-5-112. Physician's Initial Report of Injury

A. A physician shall complete and file with the Commission a ~~Every~~ physician's initial report of injury under ~~pursuant to~~ A.R.S. § 23-908(A) ~~shall be made on Commission form~~ ~~102~~ within eight days after first providing ~~rendering~~ treatment to an injured worker. The physician shall report the injury:

1. Using Commission form 102 (worker's and physician's report of injury), or
2. Attaching to form 102 a medical report that contains the information required in form 102.

B. The physician shall sign and date form 102 or the medical report attached to form 102. The signature of the physician may be typewritten or stamped on this form. ~~Form 102 is available from the Commission upon request. The prescribed form shall be signed and dated by the physician and may be signed by the employee or the employee's authorized representative. Except for the physician, no signatures shall be typewritten or stamped.~~

C. If a claimant uses form 102 to initiate a claim, either the injured worker or the injured worker's authorized representative shall sign the worker's portion of form 102. ~~Form 102 requests the following:~~

1. ~~Employee, employer, and insurance carrier identification;~~
2. ~~Description of the accident, including date of injury;~~
3. ~~Information regarding preexisting conditions the injury, treatment and prognosis.~~

R20-5-113. Physician's Duty to Provide Signed ~~Subsequent Medical~~ Reports; Rating of Impairment of Function; Restriction Against Interruption or Suspension of Benefits; Change of Physician ~~Employee's Obligation to Follow Treatment; Rating of Impairment of Function~~

A. If a claimant's ~~In every case where there is a~~ disability ~~which~~ extends beyond seven days, every physician who attends, treats, or examines the claimant ~~the employee~~ shall provide ~~personally sign (typewritten or stamped signature will not suffice) and forward~~ to the insurance carrier, self-insured employer, or special fund division, at least once every 30 days while ~~during~~ the claimant's ~~continuance of the~~ disability continues, a personally signed report describing the:

1. Claimant's ~~employee's~~ condition, ~~the~~
2. Nature ~~nature~~ of treatment, ~~the~~
3. Expected ~~expected~~ duration of disability, and ~~the~~

4. Claimant's prognosis. ~~Upon final discharge of the employee from treatment, the physician shall forward a final signed report to the insurance carrier.~~

~~**B.** Except as provided by law, an injured employee will not be permitted to voluntarily change from one hospital to another, or from one physician to another, without the written authorization of the insurance carrier, or the Commission. Except as provided in A.R.S. § 23-1070, this subsection does not apply if the injured employee did not select the hospital or physician in the first instance.~~

B. When a physician discharges a claimant from treatment, the physician:

1. Shall determine whether the claimant has sustained any impairment of function resulting from the industrial injury. The physician should rate the percentage of impairment using the standards for the evaluation of permanent impairment as published by the most recent edition of the American Medical Association in *Guides to the Evaluation of Permanent Impairment*, if applicable; and
2. Shall provide a final signed report to the insurance carrier, self-insured employer, or special fund division that details the rating of impairment and the clinical findings that support the rating.

C. A carrier, self-insured employer, and special fund division shall not interrupt or suspend a claimant's temporary disability compensation benefits because a physician fails to comply with any requirement of subsection (A).

~~**D.** Upon discharge from treatment the physician shall report any rating of any impairment of function as the result of the injury. Any rating of the percentage of impairment should be in accordance with standards for the evaluation of permanent impairment as published by the American Medical Association in *Guides to the Evaluation of Permanent Impairment*, if applicable. It shall include a clinical report in sufficient detail to support the percentage ratings assigned.~~

D. A carrier, self-insured employer, and special fund division may withhold payment to a physician for services rendered to a claimant until the physician complies with subsection (A).

~~**C.**~~**E.** Upon ~~The Commission may, upon~~ application of a ~~an interested~~ party ~~or upon its own motion~~, the Commission shall authorize a change of physician if: ~~order a change of a physician or conditions of treatment~~

1. The Commission determines ~~when there are reasonable grounds to believe~~ that the health, life, or recovery of a claimant ~~any employee~~ is retarded, endangered, or impaired;
2. The ~~thereby, or where the~~ attending physician agrees to the change or is unavailable to continue treatment;~~,~~
3. The Commission determines that the ~~or where the~~ relationship between the attending physician and claimant ~~employee~~ renders further progress or improvement unlikely;~~, or,~~
4. The ~~where, in the judgment of the~~ Commission determines that the claimant's ~~his~~ recovery may be expedited by a change of physician or conditions of treatment; or
5. The insurance carrier agrees to the change.

F. Except as provided in A.R.S. § 23-1070 and this subsection, a claimant who is examined by a physician under A.R.S. § 23-908(E) is not required to obtain written authorization to change to another physician. If, however, the claimant continues to see, or treat with, a physician who the claimant initially saw or treated with under A.R.S. § 23-908(E), then that physician is an attending physician and the claimant shall obtain written authorization to change under A.R.S. § 23-1071(B) if the claimant seeks to change to another physician.

R20-4-114. Examination at Request of Commission, Carrier or Employer; Motion for Relief

A. If the Commission or a party ~~Commission, carrier, or employer~~ requests an examination of a claimant ~~the employee~~ by a physician, the party requesting the examination shall serve the claimant, or if represented, the claimant's attorney, with notice of the time, date, place, and physician ~~person~~ conducting the examination ~~shall be sent by the requesting party to the employee, and the employee's attorney of record~~ at least 15 ~~ten~~ days before ~~prior to~~ the scheduled date of the examination.

B. If a claimant ~~an employee~~ unreasonably fails to attend or promptly advise of the claimant's ~~his~~ inability to attend an examination under ~~pursuant to~~ this Section ~~rule~~, the party requesting the examination may charge the claimant or deduct from the claimant's entitlement to present or future temporary or permanent disability compensation, any reasonable expense of the missed appointment. ~~shall be charged to the employee or may be deducted from any present or future entitlement to temporary or permanent disability compensation~~.

C. A party adverse to a party who schedules a medical examination may offer into evidence the report of any medical examination as provided in R20-5-155 or within five days after the adverse party receives the report, subject to the right of cross-examination by the party who scheduled the examination.

D. If a carrier, self-insured employer, or special fund division requests an examination of a claimant's mental or physical condition under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division shall immediately, upon receipt of the report of the examination, provide a copy of the report to the claimant or the claimant's authorized representative. If the mental condition of an unrepresented claimant is examined under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division may, in its discretion, provide the report to the claimant's treating physician rather than to the claimant.

~~**B.**~~**E.** To ~~Where justice requires to~~ protect a claimant ~~an employee~~ from annoyance, embarrassment, oppression, or undue burden or expense, the Commission may order, upon good cause shown, one or both of the following:

1. That the examination not be held; or~~.~~

2. That the examination may be conducted ~~had~~ only on specified terms and conditions, including a designation of the time, place, and examining physician.

~~C.~~**F.** A claimant requesting protection under subsection (E) ~~A motion for relief pursuant to subsection (B)~~ shall file a motion ~~be filed~~ with the presiding administrative law judge or chief administrative law judge if a judge has not been assigned to the case, within ~~two~~ three days after the claimant receives ~~the~~ notice of the examination. ~~is received~~. The claimant shall serve a copy of the motion ~~and served~~ on all ~~interested~~ parties. ~~their representatives.~~ The party requesting the examination shall have three days after receiving the motion to file a response. The party shall serve the response on the claimant or, if represented, the claimant's attorney of record. ~~If no request for hearing has been filed, then such motion shall be filed with the Chief Administrative Law Judge.~~

R20-5-115. ~~Requests for Out-of State Medical Treatment~~ Request to Leave the State

~~A. An employee whose claim for benefits has been accepted by notice of claim status will not be permitted to leave the state for a period exceeding two weeks while he is receiving medical, surgical or hospital treatment except~~
~~1. By agreement of the carrier with the concurrence of the Commission or~~
~~2. Upon a showing of compelling circumstances.~~
~~Application for permission to leave the state because of compelling circumstances must be made to the Commission and the written authorization of the Commission must be obtained. This rule shall not apply where the logical or nearest medical facilities situated across a state border.~~

~~B. Failure to receive written authorization of the Commission shall result in forfeiture of the worker's rights to compensation and medical benefits during the time the worker is out of the state.~~

~~C. Any aggravation of an employee's disability by reason of his violation of this rule will not be compensated.~~

~~D. If permission has been granted for any employee to leave the state, a petition to reopen may be based on the medical reports or authorized out of state physicians in the same manner as for Arizona physicians pursuant to R20-5-133. Such reports will be considered as evidence unless objected to at least 20 days prior to the first scheduled hearing.~~

A. The effective date of an order granting or denying a request to leave the state under A.R.S. § 23-1071(A) is the date a claimant files a request to leave the state with the Commission.

B. For purposes of A.R.S. § 23-1071(A):
1. "While the necessity of having medical treatment continues" means the period of time in which a claimant asserts an entitlement to temporary compensation, or active medical, surgical, or hospital benefits;
2. "Leave the state" means to travel across the state border, except when the logical or nearest medical facility is situated across the state border; and
3. "From the date the employee first requested the written approval" means from the date the claimant's request is filed with the Commission.

R20-5-116. Payment of Claimant's Travel ~~Transportation and Living~~ Expenses ~~of Employee~~ When Directed to Report for Medical Examination or Treatment

A. If ~~When~~ a claimant is ~~employees are~~ directed by a ~~the Commission, an insurance~~ carrier, ~~or~~ self-insured employer, or special fund division ~~an employer~~ to report for a medical examination or treatment in a locality other than either the claimant's current ~~their~~ place of residence or employment, the carrier, self-insured employer, or special fund division shall pay, in advance, the claimant's travel expenses ~~they shall be entitled to reimbursement for transportation expenses,~~ from either the claimant's current place of residence or employment, whichever route of travel is required. ~~, and for living expenses, if any, incurred by reason of such travel. The employee's place of residence or employment shall be fixed as of the date of injury.~~

B. For purposes of this Section, "travel expenses" means those expenses required to be paid under A.R.S. § 23-1026.

~~B.~~**C.** The carrier, self-insured employer, or special fund division shall calculate travel ~~Transportation and living~~ expenses using ~~shall be determined in accordance with~~ the current rates applicable to state employees. ~~Reimbursement of the expenses shall be made by the insurance carrier or employer C. Upon application by the employee and for good cause shown the Commission may order prepayment of the expenses as set forth in (B) above.~~

R20-5-117. Medical, Surgical, Hospital, and Burial Expenses

A. A carrier, self-insured employer, or special fund division, shall pay bills for medical, ~~Medical~~, surgical, and hospital benefits provided under A.R.S. § 23-901 et seq. ~~shall~~ according to applicable ~~be paid in accordance with the various~~ medical and surgical fee schedules adopted by the Commission and in effect at the time the services are rendered. A physician or provider of, ~~Physician,~~ nursing, hospital, drug or other medical services ~~bills~~ shall itemize and submit a bill ~~be itemized and presented~~ for payment only to the responsible carrier, self-insured employer, or special fund division ~~employer, or if he is insured for medical, surgical or hospital benefits, to his insurance carrier~~.

B. A ~~The~~ claimant ~~injured employee~~ shall not be responsible to pay ~~for~~ any disputed amounts between the medical provider ~~of service~~ and the ~~insurance~~ carrier, self-insured employer, or special fund division. ~~or employer concerning these fees~~.

C. If a claimant pays ~~In the event the employee or employer has paid~~ a bill described in subsection (A) ~~such items~~, the responsible carrier, self-insured employer, or special fund division shall reimburse the claimant ~~reimbursement shall be~~

~~made to the person paying them to~~ the amount ~~extent~~ allowed by the fee schedules, provided that the claimant presents receipted vouchers or other proof of payment to support the ~~bills are presented in support of a~~ claim for reimbursement.

D. If an insured employer pays a bill described in subsection (A), the responsible carrier or self-insured employer shall reimburse the employer the amount allowed by the fee schedules, provided that the employer presents receipted vouchers or other proof of payment to support the claim for reimbursement.

~~**B.**~~**E.** An insurance carrier, self-insured employer, or special fund division may pay any ~~Any~~ authorized burial expenses ~~expense may be paid~~ directly ~~by the insurance carrier~~ to the funeral service professional ~~undertaker~~.

F. If an ~~In the event the~~ employee's dependent pays ~~dependents or the employer has paid the~~ burial expenses, the responsible carrier, self-insured employer, or special fund division shall reimburse the dependent the amount ~~they shall be entitled to be reimbursed to the extent~~ authorized by A.R.S. § 23-1046 ~~law~~ provided that the dependent presents ~~upon presentation and~~ proof of payment to support ~~the carrier of~~ the claim for reimbursement.

G. If an insured employer pays burial expenses, the responsible carrier or self-insured employer shall reimburse the employer to the extent authorized by A.R.S. § 23-1046 provided that the employer presents proof of payment to support the claim for reimbursement.

R20-5-118. Effective Date of Notices ~~Notice~~ of Claim Status and Other Determinations; Attachments to Notices of Claim Status; Form of Notices of Claim Status

A. If ~~Where~~ a notice of claim status accepting a claim for benefits is ~~has become~~ final, any subsequent notice of claim status that ~~which~~ changes a ~~the~~ claimant's amount of, or entitlement to, compensation or medical, surgical, or hospital benefits shall not have a retroactive effect for more than 30 days from the date a carrier or self-insured employer issues the subsequent ~~of issuance of such~~ notice of claim status. This subsection does not apply to a ~~unless the~~ subsequent notice that affects the entitlement to or amount of death benefits. The Commission may for good cause relieve a ~~the~~ carrier or self-insured employer of the effect of this subsection.

B. If a notice ~~notices~~ of claim status or other determination ~~determinations~~ issued by a carrier, self-insured ~~an~~ employer, or special fund division ~~or carrier,~~ is based ~~are predicated~~ upon a physician's ~~the~~ report ~~of a physician~~:

1. The carrier or self-insured employer shall attach a copy of the ~~such~~ physician's complete report to ~~shall accompany~~ the notice of claim status or other determination ~~determinations~~ sent to the Commission; and ~~Commission~~.
2. The carrier, self-insured employer, or special fund division shall attach a copy of the physician's complete report to the notice of claim status or other determination served on a party, except as provided in R20-5-114(D). ~~The physician's complete report shall be made available to the applicant upon request.~~

C. If a carrier, self-insured employer, or special fund division pays ~~All claims where~~ compensation to a claimant: ~~has been paid~~

1. The carrier or self-insured employer shall close the claim ~~shall be closed~~ by issuing ~~issuance of~~ a notice of claim status~~;~~ and
2. The special fund division shall close the claim by issuing a notice of determination. ~~If the claim is closed based upon the report of the physician, a copy of the physician's complete report shall be sent to the Commission together with the notice of claim status.~~

D. The inadvertent ~~Inadvertent~~ failure of a carrier, self-insured employer, or special fund division to comply with subsection (B) ~~of this subsection~~ shall not affect the validity of a notice or determination ~~of claim status~~ if the ~~employer or~~ carrier, self-insured employer, or special fund division issuing the notice or determination had in its possession at the time the notice or determination is issued a medical report consistent with the notice or determination.

~~**D.** A notice of claim status shall contain the following:~~

~~1. Employee, employer, insurance carrier, and claim identification;~~
~~2. Information regarding the status of the claim;~~
~~3. Date the notice is mailed;~~
~~4. Name and telephone number of the issuing party; and~~
~~5. Statement regarding hearing and appeal rights with time designations provided by law.~~

R20-5-119. Notice of Third Party Settlement

A. Except as otherwise provided by law, if an employer is insured for workers' compensation insurance and a claimant, ~~an employee~~, or in the event of death, the claimant's dependent ~~his dependents~~, elects to proceed against a third party, the claimant ~~he~~ shall notify the ~~Commission, and the~~ appropriate workers' compensation carrier, or self-insured employer, of any settlement or judgment in the third party ~~such~~ suit and the basis upon which the claimant and third party agree to disburse the proceeds of the ~~such~~ settlement or judgment ~~are agreed to be disbursed~~.

B. If an employer is uninsured for workers' compensation insurance and a claimant, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the special fund division of any settlement or judgment in the third party suit and the basis upon which the claimant and third party agree to disburse the proceeds of the settlement or judgment.

~~**B.**~~**C.** If a lawsuit is filed against a third party, ~~it shall be the duty of~~ the claimant ~~employee~~ or the claimant's ~~his~~ attorney shall ~~to~~ provide ~~the workers' compensation carrier with~~ copies of ~~the~~ pleadings and all offers of settlement to the workers' com-

pensation carrier, self-insured employer, or special fund division to whom notice is required under subsections (A) and (B).

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

A. The Commission shall calculate the present value of an award that is ~~Each award which is~~ commuted to a lump sum under R20-5-122. ~~shall be reduced to its present value~~. The Commission shall not include in the present value calculation compensation ~~Compensation~~ paid before ~~prior to~~ the filing of a lump sum ~~request for a~~ commutation petition. ~~shall be excluded from the calculation of the present value of an award~~. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award. ~~Present value shall be computed as of the date following the filing of the request for commutation when the next succeeding installment of compensation would be payable under the terms of the award sought to be commuted.~~

B. The Commission shall calculate ~~Calculation of~~ the present value of an award, whether payable for a period of months or based upon the life of the employee, ~~shall be based upon~~ using the United States Abridged Life Tables, 1996, National Vital Statistics Reports, Vol. 47, Number 13, December 24,1998 (incorporated by reference and on file with the Secretary of State) ~~American Experience Table of Mortality or on such other tables as may be approved by the Commission~~ and discounted at the rate established by the Commission. This incorporation does not include any later amendment or edition of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission. ~~Approved Tables For Use under R20-5-121 are incorporated herein by reference and are on file in the office of the Secretary of State~~

R20-5-123. Rejection of the Act ~~Workers' Compensation Law~~

If an employee serves upon an employer ~~a~~ written notice under A.R.S. § 23-906, ~~in duplicate,~~ rejecting the provisions of the Act ~~Worker's Compensation Law~~, the employer shall keep ~~thereafter maintain~~ one copy of the rejection in the employer's ~~as a part of its or its compensation carrier's~~ business records.

R20-5-124. Rejection Not Applicable to New Employment

A. An ~~No~~ election by an employee to reject the Act ~~provisions of the Workers' Compensation Law shall~~ is not ~~be~~ binding upon the employee in a new employment by another employer or following re-employment by the same employer.

B. If an employee is continuously employed and the employer changes workers' compensation insurance carriers, or form of doing business, ~~employer entity,~~ the prior rejection is ~~shall be~~ valid and remains ~~remain~~ in full force and effect.

R20-5-125. Rejection Before an Employer Complies with A.R.S. §§ 23-961(A) and 23-906(D) ~~Prior to Employers Securing Insurance~~

An employee's rejection ~~Rejection~~ of the Act ~~Workers' Compensation Law by~~ received by an employer before the employer complies with the requirements of A.R.S. §§ 23-961(A) or 23-906(D) is ~~employees prior to the time that the employer has complied with the law shall be~~ valid and continues in full force and effect whether the employer subsequently obtains workers' compensation coverage under A.R.S. § 23-961(A), posts the notice required under A.R.S. § 23-906(D), or makes available the forms required under A.R.S. § 23-906(D). ~~provided the employer subsequently procures insurance and complies with the law by posting notices and keeping available forms required by law~~.

R20-5-126. Revocation of Rejection

A. An employee who rejects ~~has rejected~~ the Act ~~provisions of the Workers' Compensation Law~~ may revoke that ~~such~~ rejection by serving upon the employee's ~~his~~ employer an original and one copy of a written notice of revocation. The written revocation shall state ~~in duplicate,~~ that the employee revokes the employee's ~~his~~ prior rejection of the Act. ~~provisions of the Workers' Compensation Law~~.

B. Within five days after receiving a written notice of revocation, an insured ~~thereafter, the~~ employer~~, if insured,~~ shall file with the employer's ~~his~~ carrier, or workers' compensation pool, a ~~the~~ copy ~~duplicate~~ of the ~~such~~ notice of revocation. The ~~After the serving of such notice upon the employer, the~~ employee has ~~shall have~~ all rights to compensation and benefits provided by the Act ~~Workers' Compensation Law~~ for any injury that occurs after the employee serves the revocation notice upon the employer. ~~occurring thereafter~~.

R20-5-127. Insurance Carrier ~~Carrier's~~ Notification to Commission of Coverage

A. Every insurance carrier authorized to underwrite workers' compensation insurance in Arizona shall, within five days after undertaking to insure an employer, report that information to ~~inform~~ the Commission ~~of this fact~~. The carrier shall provide the information ~~This report shall be made~~ on or in the same format as Commission form 0006 ~~006~~. Form 0006 ~~006~~ is available upon request from the Commission.

~~**B.** Form 006 or a form in the same format shall contain the following:~~

~~1. Name and address of the carrier;~~

~~2. Legal name of entity that the carrier is insuring;~~

~~3. All other insured names or subsidiary entities under which the carrier's insured is doing business in Arizona;~~

~~4. Address of all insured entities with insurance policy information for each address.~~

~~C.~~**B.** Failure to comply with this Section does ~~rule shall~~ not affect the validity of coverage.

R20-5-128. ~~Employer's Notification to Commission of Coverage~~ Medical Information Reproduction Cost Limitation; Definition of Medical Information

~~If an employer has been insured with an insurance carrier and that insurance is canceled or terminated for any reason, the employer shall, prior to the effective date of any cancellation, file a certificate with the Commission designating his new insurance carrier or other satisfactory proof of compliance with the requirements of the Workers' Compensation Law.~~

A. A health care provider shall not charge more than $.25 per page plus $10 per hour in associated clerical costs for reproduction of medical information when a party, an authorized representative of a party, or an entity that is authorized by a claimant in a workers' compensation matter makes a request for that information under A.R.S. § 23-908(C).

B. This Section applies to all A.R.S. § 23-908(B) health care providers providing medical services to injured claimants including health care providers that contract with copying services, recordkeeping services, or other similar services for the reproduction of medical information. For purposes of this Section, fees for reproduction of medical information charged by these services are considered the same as if the reproduction fees are charged by a health care provider.

C. For purposes of this Section, "medical information" means:

1. A communication recorded in any form or medium and maintained for the purpose of patient care, diagnosis, or treatment, including a report, note, order, test result, photograph, videotape, X-ray, and billing record;
2. A report of an independent medical examination that describes patient care or treatment;
3. A psychological record;
4. A medical record held by a health care provider including a medical record prepared by another provider; and
5. A recorded communication between emergency medical personnel and medical personnel concerning the care or treatment of a person.

D. For purposes of this Section, "medical information" does not include:

1. Materials that are prepared in connection with utilization review, peer review, or quality assurance activities, including records that a health care provider prepares under A.R.S. §§ 36-441, 36-445 or 36-2402; and
2. Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity.

R20-5-129. Carrier ~~Carrier's~~ or Workers' Compensation Pool Determinations Binding upon its Insured or Member; Self-Rater Exception

A. The Commission deems an ~~The~~ insurance carrier or workers' compensation pool ~~of an insured employer shall be deemed~~ the agent of an ~~the~~ employer insured by the carrier or workers' compensation pool.

B. The Commission also deems any action or determination ~~and any actions or determinations~~ taken or made by the insurance carrier or workers' compensation pool ~~shall be~~ binding upon the employer. The ~~and the~~ employer may not ~~shall have no right to~~ protest or petition the Commission for relief concerning an action or determination ~~such actions~~ taken by the employer's ~~its~~ insurance carrier or workers' compensation pool unless~~, within the time limit prescribed by A.R.S. § 23-947,~~ the employer notifies the carrier or workers' compensation pool, and the Commission in writing that the employer ~~he~~ disagrees with the carrier's or worker's compensation pool's action or determination within the time described in A.R.S. § 23-947.

~~B.~~**C.** This Section ~~rule~~ does not apply to employers insured under a Self-Rating Insurance Plan.

R20-5-130. ~~Arizona~~ Claims Office Location and Function; Requirements of Maintaining an Out-of-State Claims Office

A. Except as provided in subsection (B), each ~~Each insurance~~ carrier that ~~which is authorized to underwrite workers' compensation insurance and~~ has or is ~~actually~~ underwriting workers' compensation ~~such~~ insurance in Arizona, and each employer and workers' compensation pool that ~~who~~ has been granted authority to act as a self-insurer by the Commission ~~Industrial Commission~~, shall maintain a workers' compensation claims office in Arizona. A carrier, self-insured employer, and self-insured workers' compensation pool shall process and pay workers' compensation claims and maintain ~~where~~ the workers' compensation claims files described in R20-5-131 in its Arizona office. A ~~shall be maintained and where claims shall be processed and paid pursuant to A.R.S. § 23-1062, subsection (C). The~~ carrier, self-insured employer, and self-insured workers' compensation pool shall notify the claims division of the Commission of the address of the Arizona ~~its~~ claims office. ~~No processing or paying of claims shall occur outside the state of Arizona without the permission of the Commission. Permission will not be unreasonably withheld if claims are being processed in an efficient and timely manner pursuant to the workers' compensation law and these Rules of Procedure~~.

B. Except as provided in subsections (C) and (D), a carrier or self-insured employer may request authorization from the Commission to maintain an out-of-state claims office. The Commission shall grant a carrier or self-insured employer authorization to maintain an out-of-state claims office no later than 20 days after the carrier or self-insured employer provides satisfactory evidence of the following:

1. Existence of a toll-free telephone line to the out-of-state claims office;

2. Completion of Commission claims division's training by the individuals responsible for claims processing at the out-of-state office; and
3. Designation of a financial institution located in Arizona that will cash on demand checks issued by the out-of-state claims office.

C. The Commission shall not permit a self-insured workers' compensation pool to maintain a claims office out-of-state.

D. The Commission shall rescind its authorization to maintain an out-of-state claims office if a carrier or self-insured employer no longer meets the requirements of subsection (B) or fails to process and pay claims as required under the Act and this Article.

E. A carrier or self-insured employer maintaining an out-of-state claims office shall print the carrier's or self-insured employer's toll-free telephone number to the out-of-state claims office on all notices of claim status or other determinations issued by the out-of-state claims office. Failure to print the toll-free telephone number on a notice or other determination as required by this subsection does not affect the validity of the notice or determination.

~~B.~~F. For claims processing purposes, ~~unless permission is granted by the Commission,~~ a carrier, self-insured employer, or self-insured workers' compensation pool may have more than one designated representative provided the carrier, self-insured employer, or self-insured workers' compensation pool:

1. Notifies the Commission at the time an insurance policy is issued or authorization to self-insure is granted; and
2. Notifies the Commission each time that the insurance policy or authorization to self-insure is renewed. ~~there shall be no more than one designated representative for each insurance carrier or self-inured employer. Permission will not be unreasonably withheld if claims are being processed in an efficient and timely manner pursuant to the workers' compensation law and these Rules of Procedure.~~

R20-5-131. Maintenance of Carrier and Self-insured Employer Claims Files ~~File~~; Contents; Inspection and Copying; Exchange of Medical Reports; Authorization to Obtain Medical Records

A. A carrier and self-insured employer shall maintain a workers' compensation claims file for each claimant. A carrier and self-insured employer shall include in a workers' compensation claims file ~~There shall be maintained at the claims office referred to in R20-5-130 a claims file which shall be the repository of~~ all employer's reports, medical and hospital reports, awards, orders, notices of claims status, wage data, and all other items affecting the claim required by law to be maintained by a ~~the~~ carrier or self-insured employer.

B. Subject to ~~the provisions of~~ subsection (C) ~~of this rule~~, all parties, authorized representatives of parties, and authorized representatives of the Commission may inspect and copy items contained ~~filed~~ in a carrier's or self-insured employer's ~~the~~ claims file ~~referred to shall be available for inspection and copying~~ within five ~~working~~ days from the date the item is filed in the claims file. ~~filing by all interested parties, their authorized representatives or authorized representatives of the Industrial Commission.~~

C. If a carrier or self-insured employer maintains a claims file at an out-of-state claims office, the carrier or self-insured employer shall make the claims file available for copying and inspection to the persons listed in subsection (B) within 10 days after receiving a request for the file at a location in Arizona designated by the carrier or self-insured employer.

D. A carrier or self-insured employer shall furnish copies of a claims file ~~Copies shall be furnished~~ within 10 days after receiving a ~~upon,~~ request from any party, authorized representative of a party, and authorized representative of the Commission at a charge not to exceed $.25 ~~25 cents~~ per page. A carrier or self-insured employer may require prepayment of the copying charges if the requester or authorized representative has an account with the carrier or self-insured employer that is more than 30 days overdue.

~~C.~~E. A carrier or self-insured employer is not required to maintain in a claims file, or produce for inspection and copying:

1. Documents ~~Documents~~ or matters representing the work product of the ~~insurance~~ carrier or self-insured employer;
2. Documents or matters representing the work product of a carrier's or self-insured's ~~its~~ attorney; or
3. Investigation ~~and investigation~~ and rehabilitation reports. ~~shall not be considered subject to inspection and copying as provided in subsection (B) hereof and need not be maintained in the claims file.~~

~~D.~~ ~~If a carrier or employer requests a medical examination of an employee a copy of the report of the examination shall, upon request, be furnished to the employee his attorney. The claimant or his attorney shall furnish to the insurer or employer, upon request, all medical reports of examinations made of the claimant's mental or physical condition which are or may thereafter be in their possession. If such reports are not in his possession, the employee shall provide the employer or carrier with releases authorizing all attending, treating or examining physicians to provide such reports.~~

F. All medical records concerning a claimant's mental or physical condition that are in a party's possession shall be furnished, upon request, to another party in the same Commission proceeding.

G. Within 10 days of a request, a claimant shall provide to a party in a Commission proceeding involving the claimant, a release of information authorizing any attending, treating, or examining physician to provide records described in A.R.S. § 23-908(C).

R20-5-133. Claimant's ~~Employee's~~ Petition to Reopen ~~for Reopening of~~ Claim

A. A ~~form for a~~ petition to reopen filed with the Commission under A.R.S. § 23-1061(H) ~~Based on New, Additional or Previously Undiscovered Disability or Condition is available upon request from the Commission. The petition~~ shall be in writ-

ing, signed, and dated by the claimant ~~employee~~ or the claimant's ~~employee's~~ authorized representative. ~~and shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim~~. A petition to reopen form is available from the Commission upon request.

~~**B.** The form requests the following:~~

~~1. Employee, employer, insurance carrier; and claim identification;~~

~~2. Disability or medical condition justifying the reopening of the claim;~~

~~3. Medical and employment history.~~

~~**C.** A Petition to Reopen Based on New, Additional or Previously Undiscovered Disability or Condition not accompanied by a statement from a physician shall not be considered filed until the date of the medical report is received by the Commission.~~

B. A claimant shall provide to the Commission a copy of a medical report supporting the disability or condition justifying the reopening of the claim.

~~**D.**~~**C.** If the Commission does not receive the medical report described in subsection (B) ~~statement of the physician is not received~~ within 14 days of ~~after the~~ receipt of a petition to reopen ~~Petition to Reopen Based on New, Additional or Previously Undiscovered Disability or Condition~~, the Commission shall notify ~~in writing~~ all parties, in writing, that it has received a petition to reopen ~~has been received~~ without the required medical report ~~physician's statement~~. A carrier or self-insured employer is not required to act on a petition to reopen that is received without the required medical report. ~~No action on the petition shall be required of the insurance carrier or employer~~.

~~**E.**~~**D.** If the Commission receives a medical report ~~statement of a physician~~ in support of a petition to reopen ~~is received~~ and a claimant does not file a ~~no~~ petition to reopen ~~is filed~~ within 14 days ~~from the date~~ of receipt of the medical report, ~~physician's statement~~, the Commission shall forward the medical report ~~physician's statement shall be forwarded~~ to the ~~insurance~~ carrier or self-insured employer for information purposes only.~~,~~ A carrier or self-insured employer ~~and no action~~ is not ~~shall be~~ required to take any action upon receipt of the medical report. ~~of the insurance carrier or employer.~~

~~**F.**~~**E.** If the Commission receives a medical report ~~the physician's report~~ in support of a ~~the~~ petition to reopen ~~is made~~ from an out-of-state ~~a~~ physician ~~residing outside of the state of Arizona~~ and a party objects to the report ~~timely objection is made~~ at least 20 days before a ~~prior to the date of any~~ scheduled hearing ~~to the consideration of the report~~, the Commission shall not consider the report or place the report in evidence ~~such report shall not be considered or placed in evidence~~ unless the party submitting the report produces the author of the report for cross-examination either at the ~~a~~ hearing or at a deposition~~, held pursuant to these rules~~. The party submitting into evidence the medical report prepared by an out-of-state physician shall pay the expenses of a deposition under this subsection. ~~Expenses of any deposition shall be borne by the party requesting such deposition.~~

R20-5-134. Petition for Rearrangement or Readjustment of Compensation Based Upon Increase or Reduction of Earning Capacity

A. A ~~A form for a~~ petition ~~Petition~~ for rearrangement ~~Rearrangement~~ or readjustment ~~Readjustment~~ of compensation ~~Compensation~~ filed with the Commission under A.R.S. § 23-1044(F) ~~based upon an increase or reduction of earning capacity is available upon request from~~ shall be in writing ~~the Commission~~. A form is available from the Commission upon request.

~~**B.** This form requests the following:~~

~~1. Employee, employer, insurance carrier; and claim identification;~~

~~2. Income and employment history;~~

~~3. Medical history;~~

~~**C.**~~**B.** A party or a party's authorized representative shall sign a petition for rearrangement or readjustment and include in the ~~The~~ petition:

1. A ~~shall be signed by the employee or the employee's authorized representative, the employer, or, in the case of an insurance carrier, by its authorized representative, and shall include a~~ statement of the basis upon which the rearrangement or readjustment of compensation is sought, and
2. Documentation in support of the petition. ~~accompanied by supportive documentary evidence.~~

~~**D.**~~**C.** No change

~~**E.**~~**D.** If a self-insured ~~an~~ employer, ~~or insurance~~ carrier, special fund division, or uninsured employer requests a hearing protesting ~~from~~ the Commission's determination under A.R.S. § 23-1044(F) and the claimant ~~employee~~ resides outside of Arizona, the Commission may~~, in its discretion,~~ order the self-insured employer, ~~or insurance~~ carrier, special fund division, or uninsured employer to pay the claimant's ~~employee's~~ transportation and living expenses to attend ~~for attendance at~~ any scheduled ~~schedule~~ hearing.

R20-5-136. Time Within Which Requests ~~within which requests~~ for Hearing Shall ~~hearing shall~~ be Filed ~~filed~~

All requests for hearing shall ~~must~~ be filed with the Commission as required under A.R.S. § 23-947 or other applicable law. ~~within 90 days after the date of mailing of a determination by an insurance carrier, employer or the Commission.~~

R20-5-137. Service of a Request ~~Requests~~ for Hearing ~~Timely Filed~~

A party filing a request for hearing shall serve a copy of the party's request for hearing upon ~~Upon the filing of a request for hearing complying with the requirement of R20-5-135 and R20-5-136, the Commission shall immediately notify~~ all other ~~interested~~ parties at the same time that the party files the request for hearing with the Commission. ~~and their authorized representatives of the filing by mailing a copy of the request to them at the their last known address.~~ The failure to serve a copy of a request for hearing upon other parties does not affect the validity of the hearing request.

R20-5-138. Hearing Calendar and Assignment to Administrative Law Judge ~~Judges~~; Notification of Hearing

A. The chief administrative law judge shall maintain a hearing calendar. The chief administrative law judge shall ensure that a request ~~Requests~~ for hearing filed in accordance ~~compliance~~ with this Article is:

1. Placed ~~these rules shall be placed~~ on the hearing calendar, and
2. Assigned ~~and shall be assigned~~ to an administrative law judge who is ~~shall thereafter be~~ designated as the presiding administrative law judge.

B. A ~~The~~ presiding administrative law judge may hold a ~~shall set the matter for hearing and notify all interested parties and attorneys of record of the time and place set for the hearing. Notice shall be given at least 20 days in advance of the hearing except in cases concerning suspension of benefits in which case ten days prior notice shall be given. Notice shall be given by mail to the parties' last known address. The~~ hearing ~~may be held~~ at an ~~any~~ earlier date than required under A.R.S. § 23-941(D), ~~however,~~ if all ~~interested~~ parties to ~~in~~ the proceeding ~~proceedings~~ agree.

R20-5-139. Administrative Resolution of Issues by Stipulation Before Filing a Request for Hearing

A. At any time before ~~prior to~~ the filing of a request ~~Request~~ for hearing ~~Hearing, the~~ parties may resolve issues by written stipulation. ~~enter into a written stipulation resolving any issue, provided~~ The parties shall ~~they~~ file the ~~such~~ stipulation with the Commission for approval or ~~such~~ other action as may be appropriate.

B. ~~Upon the filing of such a stipulation~~ If the Commission determines that a written stipulation is reasonably supported by the facts, the Commission may approve the stipulation or enter an appropriate award without ~~the necessity of~~ a request for hearing or ~~a formal~~ hearing.

R20-5-140. Informal Conferences

A. A presiding administrative law judge may hold an informal conference to:

1. Resolve and dispose of disputed issues;
2. Narrow or limit the scope of the issues to be considered at a subsequent hearing;
3. Simplify the method of proof at a hearing; or
4. Eliminate the need for hearing if the facts appear to be uncontested.

B. A ~~If a~~ party may request ~~believes~~ that a pending hearing ~~may~~ be disposed of by an informal conference, by filing a written ~~the party shall advise the presiding administrative law judge of this fact, in writing, and~~ request that:

1. Specifies the purpose for the conference consistent with subsection (A), and
2. Does not contain any argument regarding the merits of the case. ~~an informal conference be convened. If the presiding administrative law judge determines that an informal conference is appropriate, he shall notify the parties and their authorized representative in writing of the time and place of such conference. Whether or not requested by the parties, the presiding administrative law judge in his discretion may schedule an informal conference upon giving five days notice in writing to the parties of the time and place of the informal conference. This notice requirement may be waived by agreement of the parties and the presiding administrative law judge. Where requested and approved by the presiding administrative law judge, the informal conference may be conducted by telephone.~~

C. If the presiding administrative law judge determines that an informal conference is appropriate, the judge shall give notice to the parties of the time and place of the conference. The presiding administrative law judge may, without a request from a party, schedule an informal conference by giving five days notice to the parties of the time, place, and subject matter of the informal conference. The parties may waive the five day notice requirement of this subsection.

~~**B.** If convened, such informal conference shall be for the purpose of resolving and disposing of the issues in controversy; narrowing or limiting of the scope of the matters to be considered at any subsequent formal hearing, simplifying the method of proof at a hearing and eliminating the need for hearing where the facts appear to be uncontested.~~

~~**C.**~~**D.** If a presiding administrative law judge disposes of issues ~~the matters~~ in controversy ~~are disposed of~~ at an ~~the~~ informal conference, the presiding administrative law judge may enter an award without ~~the necessity of~~ convening a ~~formal~~ hearing.

~~**D.**~~**E.** If a presiding administrative law judge disposes of, narrows, or limits ~~Where~~ some, but not all issues ~~matters~~ in controversy ~~dispute, are resolved or narrowed or limited,~~ the presiding administrative law judge shall prepare and mail to the parties a statement setting forth the issues ~~remaining~~ to be resolved at a ~~formal~~ hearing. The presiding administrative law judge shall limit the ~~formal~~ hearing ~~shall be limited~~ to the issues contained in the statement unless at the ~~formal~~ hearing all ~~interested~~ parties and, ~~with the concurrence of~~ the presiding administrative law judge~~,~~ agree that the judge may ~~to~~ consider issues beyond the scope of the statement.

~~**E.**~~**F.** Upon request ~~If requested~~ by a party or upon a presiding administrative law judge's own motion, the presiding administrative law judge may order the parties to file a joint statement listing the disputed issues to be considered at formal hearing.

The presiding administrative law judge shall give the parties at least 10 days to file the statement and shall order the parties to file the statement three to 10 days before the first scheduled hearing. ~~and ordered by administrative law judge, upon ten days written notice to the parties by the administrative law judge, the parties shall file a joint statement setting forth the issues which they believe are to be contested. The joint statement provided for herein shall be filed with the Industrial Commission no sooner than ten days not later than three working days prior to the first scheduled hearing.~~

R20-5-141. ~~Witnesses;~~ Subpoena Requests for Witnesses; Objection to Documents or Reports Prepared by Out-of-State Witness

A. Subpoena requests for witnesses.

1. Subpoena request for non-medical witness. A party may request a presiding administrative law judge to issue a subpoena ~~A request for subpoenas~~ to compel the appearance of a non-medical ~~nonmedical~~ witness by filing a written request with ~~at a hearing shall be made in writing to~~ the presiding administrative law judge at ~~and filed with the Administrative Law Judge Division at~~ least 10 ~~ten~~ days before ~~prior to~~ the date of ~~upon which~~ the first scheduled hearing ~~is scheduled to be held~~.
2. Subpoena request for expert medical witness. A party may request a presiding administrative law judge to issue a subpoena to compel the appearance of an ~~A request for subpoenas for~~ expert medical witness ~~witnesses~~ by filing a written request with the presiding administrative law judge ~~shall be filed~~ at least 20 days before ~~prior to~~ the date of the first scheduled hearing.
3. Statement of expected testimony. In the discretion of the presiding administrative law judge, the ~~Upon request of the presiding administrative law~~ judge may order~~,~~ the party requesting a ~~that the~~ subpoena to file within five days of the order ~~be issued shall present~~ a written statement summarizing ~~stating~~ the substance of the testimony expected of the witness.
4. Issuance of Subpoena. A presiding administrative law judge shall issue a subpoena requested under this Section if the judge determines that the testimony of the witness is material and necessary and, if applicable:
   a. The party files a timely statement under subsection (A)(3); or ~~If a party fails to respond to such request by the presiding administrative law judge within five days, the witness shall not be subpoenaed unless the~~
   b. The party shows ~~can show~~ at or before the first scheduled hearing that good cause exists for the party's failure to respond timely to the judge's order under subsection (A)(3). ~~within the pertinent time limit and that the witness is material and necessary. If such testimony appears to be material and necessary:, the presiding administrative law judge shall issue the subpoena.~~
5. Service of a subpoena. The Commission may serve a subpoena ~~Service may be made~~ by mail unless ~~in all cases except where~~ the party ~~person~~ requesting ~~issuance of~~ the subpoena requests personal service. If a party requests personal service of a subpoena, the Commission shall prepare the subpoena and the party requesting personal service shall:
   a. Ensure that the subpoena is served ~~Service of a subpoena by personal service shall be made by and at the expense of the party requesting same and may be made~~ in the same manner as in a ~~any~~ civil action; and
   b. Pay all expenses of the service.

B. A presiding administrative law judge shall not grant a party ~~There shall be no right to~~ a continued hearing because ~~on the~~ a subpoenaed witness fails ~~failure of a subpoenaed witness~~ to appear at hearing unless the party filed a timely request for subpoena as required by ~~has been made in accordance with the provisions of~~ subsection (A) ~~hereof~~. If a party timely requested a subpoena for a witness who fails to appear at a scheduled hearing, the ~~The~~ presiding administrative law judge may~~, in his discretion,~~ grant a continued hearing if the party requesting the subpoena demonstrates that:

1. The testimony of the witness is material and necessary, and
2. Good cause is shown as to why the witness failed to appear. ~~based upon failure of the subpoenaed witness to appear on good cause shown.~~

C. Witness Fees.

1. If a non-medical witness requests a witness fee, the party requesting the subpoena shall pay the ~~If requested,~~ non-medical witness ~~nonmedical witnesses shall receive the~~ fees and mileage provided for witnesses in civil actions in the Superior Court. ~~The fees shall be paid by the party requesting the subpoena.~~ If more than one party subpoenas the same ~~a~~ witness, the parties ~~fees~~ shall divide the witness fee equally. ~~be divided between the requesting parties~~.
2. The Commission shall pay the witness fee to a medical witness under ~~Medical witness fees paid by the Industrial Commission shall only be in accordance with~~ the Commission's ~~Industrial Commission's~~ medical fee schedule after the presiding administrative law judge approves the fee. ~~and must be approved by the presiding administrative law judge.~~

D. Objection to an out-of-state physician's report.

1. A presiding administrative law judge shall not consider or place into evidence a ~~A~~ timely filed physician's report~~,~~ authored by ~~from~~ a physician residing outside ~~the state of~~ Arizona if ~~to which~~ a party files an ~~timely~~ objection to that report ~~has been made~~ at least 20 days before the ~~prior to the date of any~~ scheduled hearing, ~~shall not be considered or placed in evidence~~ unless the party submitting the report produces the author for cross-examination either at the ~~a~~ hearing or at a deposition~~. held pursuant to these rules~~.

2. Nothing in R20-5-143(G) precludes a party from taking or submitting into evidence a deposition of a physician taken under this subsection.
3. The party submitting into evidence a report of an out-of-state physician shall pay the expenses ~~Expenses~~ of a deposition taken under ~~any depositions taken pursuant to~~ this subsection. ~~rule shall be borne by the party requesting such deposition.~~

E. Objection to document prepared by out-of-state non-medical witness.
1. A presiding administrative law judge shall not consider or place into evidence a ~~A~~ timely filed document prepared by a non-medical ~~nonmedical~~ witness who resides outside ~~the state of~~ Arizona if a party files an objection to that document ~~to which objection is made~~ at least seven ~~15~~ days before the ~~prior to the date of any~~ scheduled hearing ~~shall not be considered or placed in evidence~~ unless the party submitting the document produces the author for cross-examination either at the ~~a~~ hearing or at a deposition ~~held pursuant to these rules~~.
2. Nothing in R20-5-143 precludes a party from taking or submitting into evidence a deposition within the time limits set by a presiding administrative law judge.
3. The party submitting into evidence a document prepared by an out-of-state non-medical witness shall pay the expenses ~~Expenses~~ of a ~~any~~ deposition taken under ~~pursuant to~~ this subsection. ~~rule shall be borne by the party requesting the deposition.~~

F. If ~~In lieu of the procedures prescribed in subsections (D) and (E) of this rule and with the approval of~~ a ~~the~~ presiding administrative law judge approves, the testimony of a party's out-of-state non-medical or expert medical witness~~, either lay or expert, who reside outside the state~~ may be taken telephonically.

R5-20-142. In-State ~~Witnesses'~~ Oral Depositions~~; In State~~

A. ~~After a request for hearing has been filed with the Commission, any~~ A ~~interested~~ party may ~~desiring to~~ take the oral deposition of another ~~any other interested~~ party or a witness residing in ~~within the state of~~ Arizona by serving a ~~shall file with the presiding administrative law judge, in duplicate,~~ Notice of ~~Taking~~ Deposition by Oral Examination~~. Copies of such notice shall be served at least ten days prior to the date of the deposition~~ upon the deponent and ~~upon~~ every ~~interested~~ party ~~and his authorized representative.~~ at least 10 days before the date of the ~~by the party desiring to take the~~ oral deposition and at least 40 days before the first scheduled hearing. ~~No Notice of Taking Deposition pursuant to this rule shall be filed nor any deposition taken unless the notice of taking deposition is filed at least 40 days prior to the first scheduled hearing.~~

B. A party may file with the presiding administrative law judge a written objection to the taking of an oral deposition within five days after service of the Notice of ~~the Taking of~~ Deposition ~~is served.~~, ~~objections to the taking of any oral deposition may be filed with the presiding administrative law judge.~~ If no request for hearing has been filed, a party shall file the written objection with the chief administrative law judge. The party objecting to the deposition shall:
1. State the basis for objecting to the deposition; and
2. Serve a copy of the party's objections ~~and served~~ on all ~~interested~~ parties. ~~and their authorized representatives. The objections must set forth the basis of the opposition to the deposition. If no request for hearing has been filed, then such objection shall be filed with the chief administrative law judge.~~

C. The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection ~~objections~~ to the taking of an oral deposition within seven ~~ten~~ days after a party files a ~~the filing of the~~ written objection by: ~~objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the presiding administrative law judge. The presiding administrative law judge shall either order~~
1. Ordering the deposition to proceed;
2. Ordering ~~order that~~ the deposition ~~shall~~ not be taken; or
3. Entering ~~enter~~ any ~~such~~ other appropriate protective order ~~as may be appropriate~~.

D. No change

E. No change

F. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to take or complete a deposition under this Section. ~~No scheduled hearing shall be cancelled or continued for failure to take or complete a deposition taken pursuant to the provisions of this rule.~~

G. A deposition taken under ~~pursuant to~~ ~~the provisions of~~ this Section ~~rule~~ shall only be used to impeach ~~for impeachment of~~ a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit a deposition into evidence for another purpose if: ~~unless~~
1. The ~~the~~ deponent is deceased at the time of the ~~scheduled~~ hearing, or~~, in the discretion of the presiding administrative law judge, upon the concurrence of~~
2. All ~~all~~ parties ~~involved~~ agree.~~, may be used for any purpose, in which event it shall be admitted into evidence.~~

H. A party may take a telephonic deposition under this Section ~~Depositions by telephonic communications may be permitted. Telephonic depositions may be conducted~~ either by agreement of the parties or by order of the presiding administrative law judge in the exercise of the judge's ~~sound~~ discretion.

R20-5-143. Out-of-State ~~Witnesses'~~ Oral Depositions~~; Out-of-State~~

A. ~~After a request for hearing is filed with the Commission,~~ A ~~any~~ party shall obtain ~~desiring to~~ permission from a presiding administrative law judge before taking an out-of-state ~~take~~ ~~the~~ oral deposition of another ~~any other interested~~ party or a witness ~~residing without the state of Arizona~~ by filing a written request with the presiding administrative law judge that contains: ~~shall file with the presiding administrative law judge, in duplicate, a request for permission to take the deposition. Such request shall show~~

1. The ~~the~~ name and address of the party or witness to be deposed, and ~~shall set forth the~~
2. Each reason why the party's or witness' testimony is necessary~~. for an adjudication of the claim~~.

B. The party requesting permission to take the out-of-state deposition shall serve a copy of the request ~~Copies of the request shall be served~~ upon each ~~interested~~ party~~. and his authorized representative by the party requesting permission to take the deposition.~~

C. If no objection to the request for permission to take the deposition is filed under ~~as provided in~~ subsection (D) ~~(B) hereof,~~ the presiding administrative law judge shall ~~may~~, within seven ~~ten~~ days from the date of the request, ~~in his discretion,~~ grant or deny ~~the~~ permission to take the deposition. ~~If the presiding administrative law judge permits the taking of the deposition, the party proceed in the manner provided by and subject to the limitations of R20-5-142, subsections (A), (D), (E), and (F).~~

~~**B.**~~**D.** A party may file with the presiding administrative law judge a written objection to the taking of an out-of-state oral deposition ~~Objections to the taking of the oral deposition of the party or witness shall be filed with the presiding administrative law judge~~ within five days after being served with a ~~the~~ request to take the out-of-state deposition ~~is served~~. The party objecting to the out-of state deposition shall:

1. State the basis for objecting to the deposition; and
2. Serve a copy of the party's objections on each party. ~~Objections shall be served on all other parties. and their authorized representatives. Written objections shall must set forth the basis for the opposition to the deposition. If no request for hearing has been filed then such objection shall be filed with the chief administrative law judge.~~

~~**C.**~~**E.** The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection ~~objections~~ to the taking of an out-of-state oral deposition within seven ~~ten~~ days after a party files ~~the filing of~~ the written objection by: ~~objections. The. taking of the oral deposition shall be held in abeyance pending the ruling of the presiding administrative law judge. The presiding administrative law judge shall either~~

1. Ordering ~~order~~ the deposition to proceed,
2. Ordering ~~order that~~ the deposition not be taken, or
3. Entering ~~enter~~ any ~~such~~ other appropriate protective order~~. as may be appropriate. Depositions shall be taken in the manner provided by and subject to the limitations of R20-5-133(E), R20-5-141(D) and R20-5-142(A), (D), (E) and (F).~~

~~**D.**~~**F.** A party shall not take more than two ~~Each party is limited to the taking of two~~ depositions per hearing under ~~pursuant to~~ this Section ~~rule~~ unless a presiding administrative law judge, ~~more are approved~~ upon a showing of good cause~~,~~ approves the taking of additional depositions. ~~by the presiding administrative law judge.~~

~~**E.**~~**G.** In the exercise of discretion, the presiding administrative law judge may admit into evidence a ~~Any~~ deposition taken under ~~pursuant to the provisions of~~ this Section if the transcript of the deposition is ~~rule shall be~~ filed with the Commission at least five days before ~~prior to the hearing date of~~ any scheduled hearing or as ~~unless~~ otherwise directed by the presiding administrative law judge~~. and may be admitted into evidence.~~ If the transcript of the deposition is not timely filed ~~within the time prescribed~~ under this subsection, the administrative law judge ~~herein, it~~ shall not consider the deposition ~~be considered~~ for any purpose unless the parties and the administrative law judge agree that the deposition may be considered. ~~except by stipulation of all interested parties, and then only with the concurrence of the presiding administrative law judge.~~

~~**F.**~~**H.** Parties may take telephonic depositions under this Section ~~Depositions by telephonic communications may be permitted. Telephonic depositions may be conducted~~ either by agreement of the parties or by order of a ~~the~~ presiding administrative law judge in the exercise of the administrative law judge's ~~his sound~~ discretion.

I. A party taking a deposition taken under this Section shall comply with R20-5-142(A), (D), (E) and (F).

R20-5-144. ~~Parties'~~ Written Interrogatories

A. After a party files a request for hearing ~~is filed~~ with the Commission, any party may serve ~~desiring to propound to another party~~ written interrogatories upon another party. A party shall serve written interrogatories at least 40 days before the scheduled hearing. ~~shall file with the presiding administrative law judge a notice of service of interrogatories.~~

B. A party shall not serve more than 25 ~~The written~~ interrogatories, including subsections. ~~submitted pursuant to this rule shall be limited to 25 in number with no subsections. Copies of such interrogatories shall be served upon the party and his authorized representative by the party submitting the written interrogatories. All notices of service of written interrogatories shall be filed at least 40 days prior to any scheduled hearing.~~

~~**B.**~~**C.** A party shall serve answers ~~Answers~~ to the interrogatories ~~shall not be filed with the Commission but shall~~ upon ~~be served on~~ all ~~interested~~ parties ~~by the party answering the interrogatories, or~~ within 10 ~~ten~~ days after service of the inter-

rogatories. A party shall not file answers to the interrogatories with the Commission., ~~or within ten days after a ruling by the presiding administrative law judge that the interrogatories be answered.~~

~~C.~~**D.** A presiding administrative law judge shall not cancel or continue a hearing because a party fails to answer interrogatories under this Section. ~~No scheduled hearing shall be cancelled or continued for failure to answer interrogatories propounded pursuant to the provisions of this rule.~~

~~D.~~**E.** A party shall only use written ~~Written~~ interrogatories served under ~~propounded for discovery pursuant to~~ the provisions of this Section ~~rule shall only be used~~ to impeach ~~for impeachment of~~ a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit the interrogatory answers into evidence for another purpose if ~~unless~~ the party answering the interrogatories is deceased at the time of the scheduled hearing., ~~in which event they may be admitted into evidence.~~

R20-5-145. Refusal to Answer or ~~; Refusal to~~ Attend; Motion to Compel; Sanctions Imposed

A. If a party or ~~other~~ deponent refuses to answer any question asked ~~propounded~~ at a deposition under ~~pursuant to~~ R20-5-142 or ~~and~~ R20-5-143, the party asking the question ~~the deposition~~ shall either complete the deposition ~~be completed~~ in other matters or adjourn the deposition. ~~adjourned at the option of the proponent of the question.~~ With ~~On reasonable~~ notice to all persons affected by the deponent's refusal to answer a question, ~~thereby~~, the party asking ~~proponent of~~ the question may apply to the presiding administrative law judge for an order compelling the deponent to ~~an~~ answer the question.

B. If a party refuses ~~Upon the refusal of a deponent~~ to answer an ~~any~~ interrogatory served ~~submitted~~ under R20-5-144, the party serving ~~proponent of~~ the interrogatory ~~question~~ may submit ~~the original of~~ the interrogatory ~~interrogatories~~ to the presiding administrative law judge and apply ~~make application~~ for an order compelling the ~~an~~ answer.

C. If a presiding administrative law judge issues an order compelling an answer ~~the motion~~ under subsection (A) or (B) ~~is granted~~ and ~~if presiding administrative law judge~~ finds that a refusal to answer is ~~the refusal was~~ without substantial justification, the presiding administrative law judge shall require the party or witness refusing to answer or ~~party or deponent and~~ the authorized representative ~~party or attorney~~ advising that ~~the~~ party or witness not ~~deponent to refuse~~ to answer, or both of them, to pay to the ~~examining~~ party asking the question: ~~the amount of the~~

1. Reasonable ~~reasonable~~ attorney's fees incurred to obtain ~~in obtaining~~ the order compelling the answer, and ~~the~~
2. Reasonable ~~reasonable~~ expenses that ~~expense which~~ will be incurred to obtain the requested answer ~~answers~~.

D. If a presiding administrative law judge denies a motion to compel an answer under subsection (A) or (B), and ~~the motion is denied and if the presiding administrative law judge~~ finds that the motion was made without substantial justification, the presiding administrative law judge shall require the ~~examining~~ party filing the motion, or the parties' authorized representative ~~attorney~~ advising that ~~the~~ party to make the motion, or both of them, to pay to the party or witness refusing to answer, ~~party or witness the amount of the~~ reasonable attorney's fees incurred in opposing the motion.

~~B.~~**E.** In addition to the sanctions authorized under R20-5-157, a presiding administrative law judge may, upon a party's motion, impose the following sanctions upon a party if the ~~If a~~ party, or an officer or managing agent of that ~~a~~ party, willfully fails to appear for a ~~before an officer who is to take his~~ deposition after being served with ~~the~~ proper notice of the deposition, or fails to serve answers to interrogatories after proper service of the ~~such~~ interrogatories;, ~~the presiding administrative law judge on motion and notice may~~

1. Strike ~~strike~~ out all or any part of a document filed by the party; ~~the pleading, of that party,~~
2. Dismiss ~~dismiss~~ the action or proceeding, or any part of the action or proceeding; ~~thereof~~,
3. Order ~~order~~ the suspension or forfeiture of compensation; or,
4. Preclude ~~or preclude~~ the introduction of evidence.

~~C.~~**F.** The party filing a motion under subsections (A), (B), or (E) shall attach to the motion:

1. The statement required under R20-5-105(E) and
2. A proposed order that includes the relief requested and a service page with the names and addresses of all parties served.

R20-5-146. ~~Use of Depositions of Answers to Interrogatories~~ Repealed

~~Oral depositions and answers to written interrogatories taken pursuant to this rule may only be used for the purposes set forth in and as provided by these rules~~.

R20-5-147. ~~Applicability,~~ Videotape Recordings and Motion Pictures

A. A ~~Any~~ party proposing to offer a videotape recording or motion picture into evidence at a Commission hearing shall provide written notice to the Commission and all parties at least 40 days before ~~prior to~~ the first scheduled hearing. ~~notify in writing the Commission and all interested parties and their authorized representatives~~.

B. If a party serves a written request to view a videotape recording or motion picture upon the party proposing to submit the videotape recording or motion picture into evidence, ~~Upon written request,~~ the party proposing to offer the videotape recording or motion picture into evidence shall provide the necessary facilities and equipment to allow the other party to view the ~~such~~ videotape recording ~~recordings~~ or motion picture ~~pictures~~ no later ~~less~~ than 25 days before ~~prior to~~ the first scheduled hearing.

C. A presiding administrative law judge may admit into evidence a videotape recording ~~Videotape recordings~~ or motion picture if the videotape recording or motion picture: ~~pictures may be admitted into evidence when they are~~

1. Is a reasonable and accurate ~~faithful~~ representation of the scene, person, object, or action portrayed; and ~~when~~
2. Will ~~they would~~ aid in the understanding of the issues before the presiding administrative law judge.

D. The party submitting the videotape recording or motion picture into evidence shall ensure that commentary ~~Commentary~~, interrogation, dialogue, or testimony are ~~shall~~ not a ~~be~~ part of the ~~such~~ videotape recording ~~recordings~~ or motion picture ~~pictures~~.

~~D.~~E. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to view a videotape recording or motion picture as provided in this Section. ~~No scheduled hearing shall be cancelled or continued for failure to view the videotape recordings or motion pictures within the time provided by this rule.~~

~~E.~~F. This Section does ~~rule shall~~ not apply to:

1. Videotape ~~the videotape~~ recordings or motion pictures obtained by surveillance, or ~~nor~~
2. Videotape ~~videotape~~ recordings or motion pictures of medical procedures performed by a physician ~~licensed physicians~~.

R20-5-148. Burden of Presentation of Evidence; Offer ~~Offers~~ of Proof

A. A ~~Each~~ party shall rest at the conclusion of the presentation of the party's ~~their~~ evidence. If there is a dispute as to which party has the burden of proof ~~shall go forward with the evidence~~, the presiding administrative law judge shall direct who has the burden of proof. ~~shall go forward with the evidence~~.

B. If a ~~the~~ presiding administrative law judge prohibits a witness from answering a question ~~sustains an objection thereby prohibiting a party from obtaining an answer from a witness~~, the presiding administrative law judge party shall permit ~~be permitted to make~~ an offer of proof ~~either~~ in the form of an avowal or in writing.

R20-5-149. Presence of Claimant ~~Applicant~~ at Hearing; Notice of a Parties' Non-Appearance at Hearing; Assessment of Hearing Costs for Non-Appearance

A. A claimant ~~The employee~~, whether or not represented by an attorney, shall appear personally at any hearing without the necessity of subpoena unless excused by the presiding administrative law judge.

B. Subject to subsection (A), at least three days before a scheduled hearing a party shall notify the presiding administrative law judge of any non-appearance by a party or party's authorized representative that requires the judge to cancel or reschedule the hearing.

C. If a party fails to notify the presiding administrative law judge as required under subsection (B), the presiding administrative law judge may order the party or the party's authorized representative to reimburse the Commission for hearing expenses and costs incurred by the Commission including fees of expert medical witnesses and other witness fees.

R20-5-150. Joinder of a ~~Power to Join Interested~~ Party

A. An administrative law judge may join as a party ~~applicant or party defendant~~ any person, firm, ~~or~~ corporation, or other entity in favor of whom or against whom a right to relief may ~~appear to~~ exist and over whom the Commission may acquire jurisdiction.

B. Joinder ~~The joinder~~ may be made upon application of any ~~interested~~ party or upon the presiding administrative law judge's own motion. ~~if such joinder appears appropriate.~~

C. A ~~Any~~ party seeking to join another person, firm, corporation, or other entity ~~other parties~~ shall file a motion requesting joinder with the presiding administrative law judge at least 30 days before hearing. The moving party shall serve a copy of the motion upon the person, firm, corporation, or other entity for whom joinder is requested, and upon all other parties. ~~make application and serve a copy on the party to be joined. Such application shall be filed with the presiding administrative law judge at least 30 days prior to the date set for any hearing.~~

D. If the requirements of this Section are met, the ~~Notice of joinder shall be sent by the~~ presiding administrative law judge shall join as a party the person, firm, corporation, or other entity for whom joinder is requested and shall issue a notice advising the parties of the joinder. ~~to the party and such party shall appear and may participate in the proceedings as any other party.~~

R20-5-151. Special Appearance

Any party against whom a claim ~~before the Industrial Commission of Arizona~~ may ~~appear to~~ exist under the Act, or against whom a contingent liability may ~~appear to~~ exist under the Act, and over whom the Commission has not acquired jurisdiction, may enter a special appearance. A special ~~Any~~ appearance made under ~~pursuant to the provisions of~~ this Section does ~~rule shall~~ not ~~operate to~~ invoke the jurisdiction of the Commission.

R20-5-152. Resolution of Issues by Stipulation After the Filing of a Request for Hearing ~~Stipulations~~; Notice of Resolution; Assessment of Hearing Costs

A. Subject to the requirement of subsection (D), parties ~~Subsequent to the filing of a request for hearing, the parties~~ may stipulate to any fact ~~facts~~ or issue ~~issues~~ after a party files a request for hearing. The ~~Such~~ stipulation may be in writing ~~and made prior to a hearing~~ or ~~may be~~ made orally at the time of hearing.

B. A ~~Any such~~ stipulation is ~~shall be considered~~ binding upon the parties unless a ~~the~~ presiding administrative law judge or the Commission grants the parties permission to withdraw the stipulation. ~~therefrom~~.

C. If a stipulation is not reasonably supported by the evidence, a ~~The~~ presiding administrative law judge or the Commission, ~~if he or it feels that the stipulation is not reasonably supported by the facts in evidence,~~ may set aside or refuse to accept the ~~any~~ stipulation and proceed to determine ~~ascertain~~ the true facts.

D. A party shall notify a presiding administrative law judge of any stipulation, compromise or settlement agreement, or withdrawal of a hearing request that makes a hearing unnecessary at least three days before a scheduled hearing. ~~Where the written stipulation is not filed with the presiding administrative law judge three working days before the date of a scheduled hearing resolving the issues for which the hearing is has been scheduled, or where the request for hearing has been withdrawn less than three working days before the date of a scheduled hearing,~~

E. The ~~the~~ presiding administrative law judge may order a ~~designate the~~ party or parties to reimburse the Commission for ~~liability for payment of~~ hearing expenses and costs~~,~~ incurred by the Commission including ~~which shall include the~~ fees of expert medical witnesses and other witness fees if a party fails to notify the presiding administrative law judge as required under subsection (D).

R20-5-153. Exclusion of Witnesses

Any party may request that all other witnesses except the parties be excluded from the hearing until called to testify. The presiding administrative law judge may, in the judge's ~~his~~ discretion, grant or deny the request. If the request is granted, the presiding administrative law judge shall admonish each witness ~~the witnesses~~ not to discuss the witness's ~~their~~ testimony with anyone other than attorneys on the case.

R20-5-154. Correspondence to Administrative Law Judge

A person submitting ~~Copies of any~~ correspondence, including subpoena requests, ~~request for subpoenas directed~~ to an administrative law judge concerning a matter ~~claim~~ pending before the administrative law judge, ~~him~~ shall ~~be sent~~ contemporaneously serve a copy of the correspondence upon ~~to~~ all other ~~interested~~ parties, or if represented, the parties' ~~and~~ authorized representatives. The administrative law judge shall not consider ~~Such~~ correspondence or subpoena requests ~~shall not be deemed~~ to be evidence except by agreement of all parties to the matter ~~proceeding~~.

R20-5-155. Filing of Medical ~~Reports~~ and Non-Medical Reports Into Evidence; Request for Subpoena ~~Right~~ to Cross-examine Author of Report Submitted into Evidence; Failure to Timely Request Subpoena for Author

A. Except as provided in R20-5-114(C), a party filing a medical report ~~Medical reports~~ or hospital record into evidence ("medical report") that is ~~records sought to be relied on and~~ not already contained in the Commission's claims ~~claim~~ file ~~prior to filing of the request for hearing,~~ shall file the medical report with the presiding administrative law judge ~~shall be filed~~ at least 25 days before ~~prior to the date of~~ the first ~~any first~~ scheduled hearing.~~,~~

B. A party filing into evidence a document, report, instrument, or other written matter not described in subsection (A) ("non-medical report") that is not already contained in the Commission's claims file, shall file the non-medical report with the presiding administrative law judge at least 15 days before the first scheduled hearing.

C. The party filing a medical or non-medical report into evidence shall serve a copy of the report ~~and copies shall be provided~~ to all other ~~interested~~ parties. ~~or their authorized representatives.~~

D. A presiding administrative law judge shall not receive into evidence any medical or non-medical ~~Any~~ report ~~or hospital record~~ that is not filed ~~so submitted~~ as required under this Section. If ~~shall not be received in evidence and if such~~ the report ~~or record~~ has been placed in the Commission's claims file, the presiding administrative law judge ~~it~~ shall remove the report from the Commission's claims file ~~be removed~~ and return the report ~~returned~~ to the filing party ~~submitting it.~~

E. The presiding administrative law judge may suspend the requirements ~~The effect~~ of this Section;

1 Upon a showing of good cause; or

2. If the parties agree that the judge may accept the medical or non-medical report into evidence. ~~rule may be suspended in the sound discretion of the presiding administrative law judge.~~

F. The party filing a medical or non-medical report ~~or hospital record~~ under ~~pursuant to~~ this Section ~~rule~~ shall file a cover letter with the report stating:

1. The party's identity;
2. The reports filed; and
3. Proof of service of the reports upon the other parties. ~~contemporaneously record his identity and proof of service of copies.~~

~~**B.** All other documents, reports, instruments, and other written matters upon which a party wishes to rely at a scheduled hearing, if not already contained in the claims file, shall be filed with the Commission at least 15 days prior to the date of the first scheduled hearing. Copies shall be sent to all other interested parties or their authorized representatives. The party filing same shall record his identity and proof of service of copies.~~

~~**C.**~~**G.** A ~~Any~~ party seeking ~~desiring~~ to cross-examine the author of any medical or non-medical ~~document,~~ report~~, instrument or other written matters so~~ filed into evidence shall request a subpoena under ~~in accordance with the provisions of~~ R20-5-141.

~~**D.**~~**H.** If a party fails to timely request a ~~for~~ subpoena ~~is not made~~ under ~~pursuant to~~ this Section ~~rule~~ and ~~the provisions of~~ R20-5-141, the party waives the right to cross-examine the author of any medical or non-medical report~~, document, report,~~

~~instrument, or other written~~ filed into evidence ~~matters shall be deemed waived~~ and the presiding administrative law judge shall admit the medical or non-medical report ~~document may be considered to be~~ in evidence.

R20-5-156. Continuance of Hearing

A. A party may request a continuance of a scheduled hearing. If a party shows good cause, a presiding administrative law judge may grant a request that a hearing be continued. ~~The granting of a continuance of a hearing shall be discretionary with the administrative law judge.~~

B. If at the conclusion of a hearing a ~~any interested~~ party seeks to continue the ~~desires a further~~ hearing to introduce additional ~~for the purpose of introducing further~~ evidence, the party shall state specifically and in detail:

1. The ~~the~~ nature and substance of the additional evidence,
2. The ~~desired to be produced, the~~ names and addresses of ~~the~~ additional witnesses, and
3. The ~~the~~ reason ~~why~~ the party was unable to produce the ~~such~~ evidence or ~~and such~~ witnesses at ~~the time of~~ the hearing.

C. A presiding administrative law judge may deny a request for a continuance under subsection (B) if ~~If it appears to~~ the presiding administrative law judge determines that, with the exercise of due diligence, the ~~such~~ evidence or testimony could have been produced or the ~~that~~ evidence or testimony would ~~should~~ be cumulative, immaterial, or unnecessary. ~~he may deny the request for a continued hearing.~~

D. A presiding administrative law judge ~~He~~ may, on the judge's ~~his~~ own motion, continue a hearing and order ~~such~~ further examinations or investigations that ~~as, in~~ the judge determines are ~~his discretion, appear~~ warranted.

~~**C.**~~**E.** If more than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing ~~date is reset,~~ discovery and filing deadlines under this Article ~~these rules~~ shall be calculated with respect to the new hearing date.

F. If less than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing ~~date is reset,~~ discovery and filing deadlines under this Article shall be calculated with respect to the original hearing date.

R20-5-157. Sanctions

A. A presiding administrative law judge may impose the following sanctions against any ~~Any interested~~ party or authorized representative of a party who fails to comply ~~abide~~ with ~~the provisions of~~ this Article or fails to comply with an order of the presiding administrative law judge or Commission:

1. Dismissal of the party's request for hearing;
2. Refusal to permit the introduction of evidence by the party; or
3. Assessment of reasonable attorney's fees and costs against the sanctioned party or authorized representative of a party. ~~these rules shall not be permitted to present any evidence at any of the proceedings before the Commission on the claim, or the request for hearing may be dismissed in the discretion of the presiding administrative law judge. The presiding law judge or the Commission may, in his or its sound discretion, relieve the party of the sanctions imposed for his failure to comply with these rules for good cause shown.~~

B. ~~Sanctions may be granted where an interested party fails to comply with discovery or fails to comply with an order of the presiding administrative law judge or the Commission. Sanctions may include the assessment of reasonable attorney fees and costs or the party may be restricted from presenting evidence as provided in subsection (A) of this rule.~~ If a party shows good cause, a presiding administrative law judge or the Commission may relieve a party of sanctions imposed under subsection (A).

R20-5-158. Service of Awards and Other Matters

A. An ~~Service of any~~ award, decision, order, subpoena, notice, document, or ~~any~~ other matter required by the Act, this Article, or other law ~~or these rules~~ to be served shall be made upon a ~~an interested~~ party or, if represented, ~~and~~ the party's ~~his~~ authorized representative. Service upon the authorized representative is ~~shall be deemed~~ service upon the party.

B. Service ~~of any of the matters referred to in subsection (A) hereof~~ may be made and is deemed complete by: ~~enclosing the same, or a copy thereof, in a sealed envelope and~~

1. Depositing ~~depositing~~ the document or matter ~~the same~~ in the United States mail, with postage prepaid, addressed to the party served at the address ~~Such service may be made to the address of such party~~ as shown by the records of the Commission; or ~~Commission. Service shall be deemed complete when the matter to be served is so deposited.~~
2. Personal service

~~**C.**~~ ~~Service of any of the matters referred to in subsection (A), unless otherwise required by law, may also be made personally~~ in the same manner as a summons is served in a civil action. ~~and in such event service shall be deemed complete at the time service is made.~~

~~**D.**~~**C.** Proof of service may be made by an ~~the~~ affidavit ~~certificate~~ or oral testimony of the person making such service.

R20-5-159. Record for Award or Decision on Review

A presiding administrative ~~Administrative~~ law judge's ~~judge~~ award or decision ~~awards or decisions upon review~~ under ~~issued pursuant to~~ A.R.S. § 23-942 or award or decision upon review under A.R.S. § 23-943 shall be based upon:

1. The ~~the~~ record as it exists at the conclusion of the ~~final~~ hearings, ~~held in a proceeding together with~~ and

2. Any memoranda ~~as~~ provided under A.R.S. § 23-943(E) ~~by A.R.S. § 23-943(D)~~ or requested by ~~and such memoranda which may be submitted at the discretion of~~ the presiding administrative law judge.

R20-5-160. Application ~~Petitions~~ to Set Attorney Fees Under A.R.S. § 23-1069

A. ~~If a claimant or his attorney desires that the Commission set an attorney's fee, application shall be filed prior to a final disposition of the claim~~. For purposes of A.R.S. § 23-1069, "final disposition of a case" occurs when all compensation benefits have been released to a claimant.

B. A claimant or attorney filing an application for attorney's fees under A.R.S. § 23-1069 shall serve notice of the application to all parties, including if applicable, ~~Notice of such application shall be sent to~~ the insurance carrier, self-insured employer, or special fund division.

C. Upon the filing of ~~such~~ an application, the attorney and claimant shall~~, upon the request of the Commission or its authorized representative~~, provide ~~the~~ information to the Commission ~~required~~ to enable the Commission to award reasonable ~~set a just and adequate~~ attorney's fees ~~fee~~.

D. Attorney's fees awarded ~~The attorney's fee~~ under this Section shall ~~may~~ be set by the Commission, an ~~the~~ administrative law judge, or other authorized representative of the Commission.

R20-5-162. Legal Division ~~department~~ Participation

The chief counsel ~~Chief Counsel~~ and other members of the legal staff of the Commission who participate in ~~administrative~~ proceedings or matters under the Act and this Article ~~these rules or at hearings~~ ~~shall~~ do so on behalf of the Commission.

R20-5-163. Bad Faith and Unfair Claim Processing Practices

A. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits ~~is deemed to have committed~~ "bad faith" if the employer, self-insured employer, insurance carrier, or claims processing representative ~~it has either~~:

1. Institutes ~~instituted~~ a proceeding or interposes ~~interposed~~ a defense that ~~which~~ is not:
   a. Well-grounded ~~well-grounded~~ in fact; ~~and~~
   b. Warranted ~~warranted~~ by existing law; or ~~is not~~
   c. A ~~a~~ good faith argument for the extension, modification, or reversal of existing law;
2. Unreasonably delays: ~~unreasonably delayed~~
   a. Payment ~~payment of~~ benefits;~~,~~ or ~~the~~
   b. Authorization ~~authorization~~ for, or receipt of, medical benefits or treatment;
3. Unreasonably underpays ~~unreasonably underpaid~~ benefits;
4. Unreasonably terminates ~~unreasonably terminated~~ benefits;
5. Intentionally misleads ~~intentionally misled~~ a claimant as to applicable statutes of limitation, ~~or~~ benefits, or remedies available to the claimant under the Act ~~A.R.S. Title 23, Chapter 6~~ or under this Article ~~Chapter~~; or
6. Unreasonably interferes ~~unreasonably interfered~~ with or obstructs ~~obstructed~~ the claimant's right to choose the claimant's ~~his or her~~ attending physician, except in cases involving a self-insured employer under ~~within the meaning of~~ A.R.S. § 23-1070.

B. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits ~~is deemed to have committed~~ "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative ~~it has either~~:

1. Unreasonably issues a ~~unreasonably issued any~~ notice of claim status without adequate supporting information in its possession or available to it;
2. Unreasonably fails ~~unreasonably failed~~ to acknowledge ~~and act reasonably and promptly upon~~ communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;

~~3.~~4. Directly advises ~~directly advised~~ a claimant not to consult or obtain the services of an attorney; or

~~4.~~5. Communicates ~~communicated~~ directly, for an improper purpose, with a claimant represented by an attorney ~~for an improper purpose~~.

C. A person ~~complaint~~ alleging bad faith or unfair claim processing practices ("complainant") shall file a written complaint ~~be in writing, signed by the complainant or the authorized representative, and filed~~ with the claims manager of the Commission. The complainant, or the complainant's authorized representative, shall sign the complaint. ~~A copy of the complaint shall be mailed to the person or entity named in the complaint, and to that party's attorney, if its representation is apparent in the particular case. The complaint form is available on request from the Commission.~~

D. The complaint shall describe the specific actions of the employer, self-insured employer, insurance carrier, or claims processing representative, that ~~which~~ are alleged to constitute bad faith or unfair claim processing practices. A complaint form is available upon request from the Commission.

E. Upon receipt of a complaint under this subsection, the ~~The~~ claims manager of the Commission ~~Industrial Commission~~ shall ~~forthwith~~ serve the complaint upon all ~~interested~~ parties. ~~and their counsel~~.

~~D.~~**F.** If the Commission acts on its own motion under ~~pursuant to~~ A.R.S. § 23-930(A), the claims manager shall mail a notice of alleged bad faith or unfair claim processing practices to the claimant or the claimant's authorized representative and the:

1. Employer ~~employer~~;
2. Self-insured ~~self-insured~~ employer;
3. Insurance ~~insurance~~ carrier; or
4. Claims ~~claims~~ processing representative~~,~~ ~~and either to the claimant or to the claimant's attorney, if the claimant is represented by an attorney.~~

~~E.~~**G.** The person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section ~~An employer, self-insured employer, insurance carrier, or claims processing representative~~ shall file with the claims manager a written response to the complaint or notice, ~~with a copy to the claimant or the claimant's attorney to a complaint filed with the claims manager~~ within 30 days after service by the Commission of the complaint or notice.

H. The person or entity filing a written response shall serve a copy of the response upon the complainant, or the complainant's authorized representative, if represented. ~~received pursuant to subsection (C) or (D) of this rule.~~

I. If the person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section fails to file a written response, the Commission shall consider ~~Where no written response is filed within 30 days,~~ the absence of ~~such~~ a response ~~shall be taken as~~ a denial of the allegations of the complaint or notice.

J. Upon receipt of a written response, or upon the expiration of 30 days if no response is filed, the Commission ~~The Commission~~ shall enter an ~~forthwith the~~ award as it deems, in its discretion, appropriate under A.R.S. §§ 23-930(B) or (C).

R20-5-164. Human Immunodeficiency Virus and Hepatitis C Significant Exposure~~:~~ Employee Notification; Reporting; Documentation; Forms

A. An employer ~~Employers~~ subject to the ~~provisions of~~ Act ~~Title 23, Chapter 6, Arizona Revised Statutes,~~ shall notify its ~~their~~ employees of the requirements of A.R.S. § 23-1043.02 and § 23-1043.03 by posting the Commission notice titled ~~entitled~~ "Work Exposure to Bodily Fluids"~~.~~ in a conspicuous place ~~This notice shall be conspicuously posted~~ immediately next ~~adjacent~~ to the "Notice to Employees" notice required under ~~by~~ A.R.S. § 23-906(D).

B. A properly posted ~~The~~ "Work Exposure to Bodily Fluids" notice constitutes~~,~~ ~~when posted, shall constitute~~ sufficient notice to employees of the requirements of a prima facie case under A.R.S. § 1043.02(B) and § 23-1043.03(B).

C. An employer's ~~The~~ insurance carrier, ~~or~~ claims processor, or workers' compensation pool shall provide the "Work Exposure to Bodily Fluids" notice to the employer. This notice is also available from the Commission upon request.

~~B.~~**D.** An employer ~~Employers~~ shall make readily available to its employees the Commission ~~a supply of Commission~~ form described in R20-5-106 ~~forms~~ titled ~~entitled~~ "Report of Significant Work Exposure to Bodily Fluids"~~,~~ ~~the content of which is described in subsection (D).~~ An employer's ~~The~~ insurance carrier, ~~or~~ claims processor, or workers' compensation pool shall provide the "Report of Significant Work Exposure to Bodily Fluids" ~~these forms~~ to the employer. This form is ~~These forms are~~ also available from the Commission upon request.

~~C.~~**E.** If an employee sustains ~~In the event of~~ a significant exposure as defined in A.R.S. § 23-1043.02(G) or § 23-1043.03(G), the employee shall complete, date, and sign a "Report of Significant Work Exposure to Bodily Fluids" form. The employee or employee's authorized representative shall give to the employer the ~~be~~ completed, dated, and signed form. ~~and given to the employer by the employee or the employee's authorized representative~~. The employer shall return one copy of the completed form to the employee or to the employee's authorized representative. Nothing in this subsection limits ~~shall be construed to limit~~ the requirements to report ~~of reporting~~ an injury or file ~~filing~~ a claim under the Act. ~~pursuant to Title 23, Chapter 6, Arizona Revised Statutes.~~

~~D. In addition to stating the requirements of A.R.S. § 23-1043.02(B), the "Report of Significant Work Exposure to Bodily Fluids" requires the following information:~~

~~1. Employee identification;~~
~~2. Employer identification;~~
~~3. Details of the Exposure: Date, time and place of exposure, how exposure occurred, type of bodily fluid(s), source of bodily fluid(s), part(s) of body exposed to bodily fluid(s), presence of break/rupture in skin or mucous membrane, and witnesses (if known).~~
~~4. Dated signature of employee or the employee's authorized representative.~~

~~E.~~**F.** If an employee submits a ~~employee~~ written report of a significant exposure to ~~which is filed with~~ an ~~the~~ employer, but does ~~is~~ not use ~~on~~ the Commission form titled ~~entitled~~ "Report of Significant Work Exposure to Bodily Fluids", the employer shall provide the employee ~~with~~ the Commission form within five calendar days after ~~from the~~ receiving the employee's initial written ~~employer's receipt of the~~ report.

G. The date of the receipt by the employer or its authorized representative of the employee's initial report is the date ~~shall be~~ used to compute the time period prescribed in A.R.S. § 23-1043.02(B)(2) and § 23-1043.03(B)(2) if: ~~so long as~~

1. The ~~the information contained in the~~ initial report contains the information required in the "Report of Significant Work Exposure to Bodily Fluids" form, ~~meets the requirements of subsection (D)~~; or
2. The ~~the~~ employee gives to the employer the completed Commission form within 10 ~~ten~~ calendar days after the employee's receipt of the Commission form.

H. Failure or refusal by the employer to provide the Commission form to the employee shall not be a defense to a prima facie claim under ~~pursuant to~~ A.R.S. § 23-1043.02(B) and § 23-1043.03(B).

~~F.~~I. In investigating the circumstances and facts surrounding an employee's report to an ~~the~~ employer of a significant exposure to bodily fluids under ~~pursuant to~~ A.R.S. § 23-1043.02(C) and § 23-1043.03(C), the employer, or its carrier, or any ~~of their~~ employees, agents or contractors of either the employer or carrier, shall not disclose to any person, except as authorized or required by law, that the reporting employee ~~who made the report of a significant exposure to bodily fluids~~, or any witness or alleged source of exposure, may have or did contract the human immunodeficiency virus, ~~or~~ acquired immune deficiency syndrome, or hepatitis C. However, an employer, its carrier or their respective attorneys, may:

1. Direct ~~direct~~ an ~~investigating~~ agent to investigate the employee's report of significant exposure to bodily fluids; and ~~may~~
2. Communicate ~~communicate~~ with the investigating agent about the conduct and results of the investigation.

J. As required under the federal Occupational Safety and Health Standard for Bloodborne Pathogens, 29 CFR 1910.1030, an employer shall pay for the testing required by A.R.S. § 23-1043.02.