



NOTICES OF PROPOSED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same Register issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the Register within three weeks of filing. See the publication schedule in the back of each issue of the Register for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

[R16-29]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action
R14-2-802 Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: Arizona Constitution Article XV, § 3; A.R.S. §§ 40-202, 40-203, and 40-321

Implementing statute: Arizona Constitution Article XV, § 3; A.R.S. §§ 40-202, 40-203, and 40-321

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 22 A.A.R. 424, March 4, 2016 (in this issue).

4. The agency's contact person who can answer questions about the rulemaking:

Name: Maureen Scott, Senior Staff Counsel, Legal Division
Address: Corporation Commission
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Phoenix, AZ 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: mscott@azcc.gov
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Name: Robin Mitchell, Staff Attorney, Legal Division

Address: Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-3402
 Fax: (602) 542-4870
 E-mail: RMitchell@azcc.gov
 Web site: www.azcc.gov

Name: Matthew Connolly, Executive Consultant, Utilities Division
 Address: Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-0856
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5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The purpose of the proposed rule change would be to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interest Rules, except as may be determined by a future Arizona Corporation Commission order. The specific change proposed is based upon and supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013.

The proposed rule change is expected to relieve eligible telecommunications companies from having to submit to the Commission applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Class A Investor-owned Utilities and Affiliates Annual Reports.

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

None

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

Not applicable

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

NOTE – The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a “substantially similar” statement.

Economic, Small Business and Consumer Impact Statement

1. Identification of the proposed rulemaking.

The purpose of the proposed rule change would be to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interest Rules, except as may otherwise be determined by a future Commission



order. The specific change proposed is based upon and supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013¹.

2. **Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.**

- a. Telecommunications service providers whose services have been determined to be competitive in Arizona; and the
- b. Arizona Corporation Commission.

3. **Cost-benefit analysis.**

a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.**

There are no probable costs to the Commission. Probable benefits to the Commission of the proposed rulemaking would include cost and time savings associated with no longer having to process applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to process Class A Investor-Owned Utilities and Affiliates Annual Reports filed by telecommunications companies.

b. **Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

Not applicable

c. **Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

Probable benefits to telecommunications companies meeting the eligibility requirement of the proposed rulemaking would include cost and time savings associated with no longer having to submit applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Class A Investor-Owned Utilities and Affiliates Annual Reports. Payroll expenditures of eligible companies will probably not be affected. Any revenue increase of eligible companies as a result of no longer having to perform the aforementioned filings is probably de minimis.

4. **Probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.**

No impact on employment is expected.

5. **Probable impact of the proposed rulemaking on small businesses.**

a. **Identification of the small businesses subject to the proposed rulemaking.**

¹In 2013, the legislature added Subpart (F) to the statute which reads as follows: F: “This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section.”

To the extent that a small business may be involved in a future merger with an eligible telecommunication company, the small business may benefit as such a transaction would be less regulatory burdensome in Arizona.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

There should be no costs or benefits to private persons who are customers of eligible telecommunications companies as a result of this rule making.

6. Probable effect on state revenues.

None

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission is unaware of any alternative methods of achieving the purpose of the rule making that would be less intrusive or less costly.

8. Description of any data on which the rule is based.

The proposed rulemaking is not based on data.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

The proposed rulemaking is not based on data.

9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Maureen Scott, Senior Staff Counsel, Legal Division
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1200 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-3402
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Web site: www.azcc.gov

Name: Robin Mitchell, Staff Attorney, Legal Division
Address: Corporation Commission



1200 W. Washington St.
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 Address: Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-0856
 Fax: (602) 364-2270
 E-mail: MConnolly@azcc.gov
 Web site: www.azcc.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Commission has scheduled the following oral proceeding for public comments:

Date: April 14, 2016
 Time: 10:00 a.m.
 Location: Arizona Corporation Commission
 Hearing Room 1
 1200 W. Washington St.
 Phoenix, AZ 85007

Nature: Oral proceeding

The Commission requests that written comments be filed by April 4, 2016 and that responsive written comments be filed by April 14, 2016. The comments may be filed with the Commission’s Docket Control at the address listed above. Please reference Docket No. AU-00000A-15-0246 on all documents.

Oral comments may be provided at the proceedings on April 14, 2016, at 10:00 a.m., as noted above.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule is no more stringent than Federal Communications Commission rules. (47 C.F.R. 63.04)

c. Whether a person submitted an analysis to the agency that compares the rule’s impact on the competitiveness of business in this state to the impact on business in other states:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS

Section

R14-2-802. Applicability

ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS

R14-2-802. Applicability

- A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules. Notwithstanding the preceding sentence, these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be determined by a future Commission order.
- B. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R16-30]

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected</u> | <u>Rulemaking Action</u> |
| R20-5-715 | Amend |
- 2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:**
 Authorizing statutes: A.R.S. §§ 23-107(A)(1); 23-961.01(B)
 Implementing statute: A.R.S. § 23-961.01(F)
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 22 A.A.R. 239, February 12, 2016.
- 4. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Scott J. Cooley, Attorney
 Address: Industrial Commission of Arizona
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-5781
 Fax: (602) 542-6783
 E-mail: scott.cooley@azica.gov
- 5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

A.R.S. § 23-961.01(F) requires that the Industrial Commission of (Commission) “adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits required under [A.R.S. Title 23, Chapter 6, Workers’ Compensation]. These rules shall include, at a minimum, matters pertaining to [among other things] . . . specific and aggregate excess insurance . . . necessary for participation in and administration of the workers’



compensation system.”

Under A.R.S. § 23-961.01, enacted by the Arizona Legislature in 1997, two or more employers who are engaged in similar industries may self-insure by entering into contracts to establish a workers’ compensation pool to provide for the payment and administration of their workers’ compensation claims under the Arizona Workers’ Compensation Act. Following the enactment of A.R.S. § 23-961.01, the Commission adopted rules, Article 7, in 1998 to implement the new legislation. Rule 715 specifies the amount of specific excess and aggregate insurance such pools must maintain.

Rule 715 currently specifies that the maximum retention for specific excess insurance is \$250,000.00. The maximum retention of aggregate excess insurance cannot exceed 110 % of collected premiums. The minimum total aggregate insurance coverage cannot be less than \$5,000,000.00.

When Rule 715 was made in 1998, specific excess insurance coverage in the amount of \$250,000.00 was available on the insurance market at a reasonable cost. Today, a pool would find it difficult and likely very costly to obtain specific excess insurance coverage with a maximum retention in the amount of \$250,000.00. Employers who seek to self-insure through this type of pool would likely be unable to do so because of the unavailability or cost of the specific excess and aggregate insurance coverage mandated by Rule 715. In short, Rule 715 is viewed as an impediment and may discourage employers in similar industries from forming pools to self-insure their workers’ compensation liabilities, frustrating the intent of the legislation. The Industrial Commission seeks to address this issue and amend Rule 715 to reflect present economic realities.

Rule 715 will be amended to specify that the maximum retention for specific excess insurance not be less than \$100,000.00 nor exceed \$1,250,000.00 without advance written approval by the Commission. The maximum retention of aggregate excess insurance will now not exceed 150% of collected premiums. The minimum total aggregate insurance coverage will now not be less than \$1,000,000.00.

The Commission is making these rules to reduce or ameliorate the regulatory burden currently imposed by Rule 715. At the same time, the amendments are intended to achieve the same regulatory objective contemplated by A.R.S. § 23-961.01(F).

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

The Commission has not reviewed or relied on a study for this rulemaking.

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

Not applicable

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

The Arizona Workers’ Compensation Act requires that employers secure workers’ compensation insurance from an insurance carrier licensed to write workers’ compensation insurance in Arizona or by obtaining authorization from the Commission to self-insure for its workers’ compensation liabilities. Rule 715 is located in 20 A.A.C. 5, Article 7, which addresses self-insurance requirements for workers’ compensation pools organized under A.R.S. § 23-961.01.

Rule 715 specifies the amount of specific excess and aggregate insurance such pools must maintain. Specific excess insurance covers an individual claim up to a threshold and once the pool has paid on that claim up to the threshold, the excess insurance carrier is obligated to pay amounts over the threshold. The use of specific excess coverage mitigates the pool’s risk resulting from any one individual claim.

Aggregate coverage pays claims once the pool has paid a predetermined amount, not including those claims where the excess carrier is already paying under specific excess coverage, sometimes called the aggregate attachment point, for all claims. Aggregate coverage mitigates the pool’s overall risk from all claims. In essence, there is a predetermined amount the pool must pay for individual claims and then a total amount for the pool’s entire self-insured program with the excess insurance carrier paying claims above those predetermined amounts.

One primary impact of the rule amendments originates from amending the rule to provide a range of maximum retention for specific excess insurance, which on the low end of the range lowers the retention requirement to \$100,000.00. The amendments also reduce the amount of total aggregate insurance coverage from \$5,000,000.00 to \$1,000,000.00. By adopting these changes, the Commission intends to increase the availability and lower the cost of the specific excess and aggregate insurance coverage mandated by the rule. The option of a lower retention

requirement for specific excess insurance and the lower total aggregate insurance coverage required should encourage employers in similar industries to form pools to self-insure their workers' compensation liabilities, consistent with the original intent of A.R.S. § 23-961.01.

The rulemaking also includes a safeguard with respect to selection of a specific excess insurance maximum retention amount by requiring advance written approval of the amount by the Commission. The maximum retention of aggregate excess insurance has been increased from 110% of collected premiums to 150% of collected premiums to reflect present economic realities. The beneficial economic impact of the rulemaking is expected to be significant for businesses, both large and small, seeking to explore the self-insurance option.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Scott Cooley, Attorney
 Address: Industrial Commission of Arizona
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-5781
 Fax: (602) 542-6783
 E-mail: scott.cooley@azica.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted to the address listed in item 9 and must be received by 5:00 p.m. on April 12, 2016. An oral proceeding is scheduled for April 12, 2016 at 9:00 a.m., at the Industrial Commission of Arizona, 800 West Washington Street, Room 308, Phoenix, Arizona, 85007.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The amended rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The subject matter of the rulemaking, retention amounts for specific excess and aggregate excess insurance and total aggregate insurance coverage, is governed by state law, specifically A.R.S. § 23-961.01, rather than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE
 CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS' COMPENSATION POOL ORGANIZED UNDER A.R.S. § 23-961.01

Section
 R20-5-715. Aggregate and Specific Excess Insurance Policies



ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

R20-5-715. Aggregate and Specific Excess Insurance Policies

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
 - 1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
 - a. Maximum retention for specific excess insurance shall not be less than \$100,000 nor exceed \$250,000 ~~\$1,250,000~~ without advance written approval by the Commission. Specific excess insurance shall be provided to the statutory limit; and
 - b. Maximum retention of aggregate excess insurance shall not exceed ~~40~~150% of collected premiums. Total aggregate insurance coverage shall not be less than ~~\$5,000,000~~ \$1,000,000.
 - 2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.