

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

(Authority: A.R.S. § 23-101 et seq.)

20 A.A.C. 5, consisting of R20-5-101 through R20-5-164, R20-5-201 through R20-5-224, R20-5-301 through R20-5-318, R20-5-401 through R20-5-428, R20-5-501 through R20-5-512, R20-5-601 through R20-5-682, R20-5-801 through R20-5-829, R20-5-901 through R20-5-914, and R20-5-1001 through R20-5-1007 recodified from 4 A.A.C. 13, consisting of R4-13-101 through R4-13-164, R4-13-201 through R4-13-224, R4-13-301 through R4-13-318, R4-13-401 through R4-13-428, R4-13-501 through R4-13-512, R4-13-601 through R4-13-682, R4-13-801 through R4-13-829, R4-13-901 through R4-13-914, and R4-13-1001 through R4-13-1007, pursuant to R1-1-102 (Supp. 95-1).

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 11-952.01(B) AND 41-621.01**

Article 2, consisting of Sections R4-13-201 through R4-13-222, adopted effective July 6, 1993 (Supp. 93-3).

Article 2, consisting of Sections R4-13-201 through R4-13-224, repealed effective July 6, 1993 (Supp. 93-3).

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

Article 7, consisting of new Sections R20-5-701 through R20-

5-739, adopted effective September 9, 1998 (Supp. 98-3).

Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).

New Article 7 adopted effective July 13, 1989. (Supp. 89-3)

Article 7, consisting of Sections R4-13-701 through R4-13-708, transferred to the Department of Agriculture, Title 3, Chapter 8, Article 7, Sections R3-8-201 through R3-8-208, pursuant to Laws 1990, Ch. 374, Sec. 445 (Supp. 91-3). R20-5-701 through R20-5-708 recodified from R4-13-701 through R4-13-708 (Supp. 95-1).

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- R20-5-723. Trustee Fund; Loss Fund
- R20-5-724. Investment Activity of a Pool
- R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims
- R20-5-726. Processing of Workers' Compensation Claims by a Pool
- R20-5-727. Loss Control and Underwriting Programs
- R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy
- R20-5-729. Arizona Office; Recordkeeping; Records Available for Review
- R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission
- R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission
- R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065
- R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division
- R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- R20-5-735. Right to Request a Hearing
- R20-5-736. Hearing Rights and Procedures
- R20-5-737. Decision Upon Hearing by Commission
- R20-5-738. Request for Review
- R20-5-739. Revocation of Authority to Self-insure

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

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- R20-5-801. Notice of Rules
- R20-5-802. Location of Office and Office Hours
- R20-5-803. Definitions
- R20-5-804. Computation of Time
- R20-5-805. Record Address
- R20-5-806. Service and Notice
- R20-5-807. Consolidation
- R20-5-808. Severance
- R20-5-809. Election to Appear
- R20-5-810. Employee Representatives
- R20-5-811. Form of Pleadings
- R20-5-812. Caption; Titles of Cases
- R20-5-813. Requests for Hearing
- R20-5-814. Pre-hearing Conference
- R20-5-815. Payment of Witness Fees and Mileage
- R20-5-816. Notice of Hearing
- R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing
- R20-5-818. Duties and Powers of Hearing Officers
- R20-5-819. Witnesses' Oral Deposition; In State
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- R20-5-821. Parties' Deposition upon Written Interrogatories
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- R20-5-824. Intermediary Rulings or Orders by the Hearing Officer
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- R20-5-826. Decisions of Hearing Officers
- R20-5-827. Settlement
- R20-5-828. Special Circumstances; Waiver of Rules
- R20-5-829. Variances

ARTICLE 9. EXPIRED

Article 9, consisting of Sections R20-5-901 through R20-5-914, expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

Former Article 9 consisting of Sections R4-13-901 through R4-13-906 repealed effective May 27, 1977. R20-5-901 through R20-5-914 recodified from R4-13-901 through R4-13-914 (Supp. 95-1).

Article 9 consisting of Sections R4-13-901 through R4-13-914 adopted effective May 27, 1977.

Section

- R20-5-901. Expired
- R20-5-902. Expired
- R20-5-903. Expired
- R20-5-904. Expired
- R20-5-905. Expired
- R20-5-906. Expired
- R20-5-907. Expired
- R20-5-908. Expired
- R20-5-909. Expired
- R20-5-910. Expired
- R20-5-911. Expired
- R20-5-912. Expired
- R20-5-913. Expired

R20-5-914. Expired

ARTICLE 10. WAGE CLAIMS

Section

- R20-5-1001. Definitions
- R20-5-1002. Forms
- R20-5-1003. Filing Requirements; Time for Filing; Computation of Time
- R20-5-1004. Investigation of Claim
- R20-5-1005. Mediation of Disputes
- R20-5-1006. Dismissal of Claim
- R20-5-1007. Notice of Right of Review
- R20-5-1008. Payment of Claim
- R20-5-1009. Service of Determinations, Notices, and Other Documents

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

Article 11, consisting of Sections R20-5-1101 through R20-5-1136, made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

Section

- R20-5-1101. Definitions
- R20-5-1102. Computation of Time
- R20-5-1103. Forms
- R20-5-1104. Commission Approval to Act as Self-insurer
- R20-5-1105. Resolution of Authorization
- R20-5-1106. Time-frames
- R20-5-1107. Initial Application under A.R.S. § 23-961
- R20-5-1108. Self-insurance Renewal
- R20-5-1109. Security Deposit; Excess Insurance Policy
- R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date
- R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States instead of Guaranty Bond; Registration; Deposit
- R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)
- R20-5-1113. Substitution of Securities
- R20-5-1114. Exemption from Requirement to Post Security
- R20-5-1115. Rating Plans Available for a Self-insurer
- R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan
- R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan
- R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan
- R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan
- R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065
- R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans
- R20-5-1122. Report, Book, Record, and Data Review by the Commission
- R20-5-1123. Audit and Cost of Audit
- R20-5-1124. Requirement to Provide Information to the Commission
- R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files
- R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer
- R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

- R20-5-1129. Right to Request a Hearing
- R20-5-1130. Hearing Rights and Procedures
- R20-5-1131. Decision Upon Hearing by the Commission
- R20-5-1132. Request for Review
- R20-5-1133. Revocation of Authorization to Self-insure
- R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address
- R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy
- R20-5-1136. Notice of Termination of Authorization to Self-insure by Self-insurer

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

Article 12, consisting of Sections R20-5-1201 through R20-5-1220, made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3).

Article 12, consisting of Sections R20-5-1201 through R20-5-1220, made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1).

Section

- R20-5-1201. Notice of Rules
- R20-5-1202. Definitions
- R20-5-1203. Duty to Provide Current Address
- R20-5-1204. Forms Prescribed by the Department
- R20-5-1205. Determination of Employment Relationship
- R20-5-1206. Payment of Minimum Wage; Commissions; Tips
- R20-5-1207. Tip Credit Toward Minimum Wage
- R20-5-1208. Posting Requirements
- R20-5-1209. Records Availability
- R20-5-1210. General Recordkeeping Requirements
- R20-5-1211. Administrative Complaints
- R20-5-1212. Conduct that Hinders Investigation
- R20-5-1213. Findings and Order Issued by the Department
- R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing
- R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing
- R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review
- R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)
- R20-5-1218. Collection of Wages or Penalty Payments Owed
- R20-5-1219. Resolution of Disputes
- R20-5-1220. Small Employer Request for Exception to Record-keeping Requirements

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE**R20-5-101. Application of the Article; Notice of Rules; Part of Record**

- A.** This Article applies to all actions and proceedings before the Commission resulting from:
1. Injuries that occurred on or after January 1, 1969;
 2. Petitions to Reopen or Petitions for Readjustment or Rearrangement of Compensation filed on or after that date; and
 3. Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).

- B. This Article is part of the record in each action or proceeding without reference to the Article.
- C. The Commission deems all parties to have knowledge of this Article.
- D. The Commission shall provide a copy of this Article upon request to any person free of charge.

Historical Note

Former Rule 1. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-101 recodified from R4-13-101 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 4530, effective, December 2, 2008 (Supp. 08-4).

R20-5-102. Definitions

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.

Historical Note

Former Rule 2. R20-5-102 recodified from R4-13-102 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-103. Location of Industrial Commission Offices and Office Hours

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.

Historical Note

Former Rule 3. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-103 recodified from R4-13-103 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. A claimant shall advise the Commission and carrier or self-insured employer of the claimant’s current mailing 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 address of a claimant’s or uninsured employer’s attorney or authorized representative is not sufficient to meet the requirements of this Section.

Historical Note

Former Rule 4. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-104 recodified from R4-13-104 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- 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.

Historical Note

Former Rule 5. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-105 recodified

from R4-13-105 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-106. Commission Forms

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 or other infectious material shall contain:
 - a. The requirements set forth in A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B);
 - b. Employee identification,
 - c. Employer identification,
 - d. Source of exposure person identification (if known),
 - e. 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
 - f. Dated signature of employee or the employee's authorized representative.
- B. 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 health care providers rendering treatment to deceased in two years before death;
 - h. Conditions treated by health care 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.
- C. Optional use of a form described in subsection (B) does not affect any requirement under the Act or this Article.
- D. Forms or format for the forms described in this Section are available from the Commission.
- E. Forms prescribed under this Section shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

Historical Note

Former Rule 6. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-106 recodified from R4-13-106 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

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

- A. An individual completing a form or document shall fill out the form or document legibly in ink or by typewriter.
- B. A party or a party's authorized representative shall sign any form or document that is required by the Act, this Article, or other law to be signed.
- 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.
- D. If, within the time period prescribed by law, a party files 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. The Commission deems the report or document timely filed if the party files a properly completed and signed form or document within 14 days after the Commission serves the notice described in this subsection.

Historical Note

Former Rule 7. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-107 recodified from R4-13-107 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. Except as provided in this Section, a claims file maintained by the Commission is 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.
- B. Except as provided in subsections (D) and (E), the Commission shall make a Commission claims file relating to a current or prior claim of a claimant available for inspection and copying by any party to any proceeding currently or previously before the Commission involving the same claimant.
- C. Except as provided in subsections (D) and (E), the Commission shall not make a Commission claims file available to a non-party for inspection and copying unless the Commission receives a court order or written authorization signed by the affected claimant or the affected claimant's authorized representative.
- 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.
- 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.
- F. The Commission shall provide copies at a charge of \$.25 per page.
- G. A Commission claims file shall not be removed from a Commission office unless in the custody of an authorized representative of the Commission.

Historical Note

Former Rule 8. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-108 recodified from R4-13-108 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. If a party or an administrative law judge considers a document contained in a Commission claims file, including a transcript of a prior proceeding, necessary or appropriate for hearing purposes, 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.

Historical Note

Former Rule 9. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-109 recodified

from R4-13-109 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-110. Employer Duty to Report Fatality

If an employee dies as a result of an injury by accident arising out of and in the course of employment, the employer shall report the death to the Commission's claims division by telephone, telegram, or electronic filing, no later than the next business day following the death. The report shall state 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.

Historical Note

Former Rule 10. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-110 recodified from R4-13-110 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-111. Request for Autopsy

If a claim is filed for compensation for death from an industrial injury and an autopsy is requested, the expense of the autopsy shall be borne by the requesting party.

Historical Note

Former Rule 11. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-111 recodified from R4-13-111 (Supp. 95-1).

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

- A. A physician shall complete and file with the Commission a physician's initial report of injury under A.R.S. § 23-908(A) within eight days after first providing 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.
- 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.

Historical Note

Former Rule 12. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-112 recodified from R4-13-112 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. If a claimant's disability extends beyond seven days, every physician who attends, treats, or examines the claimant shall provide to the insurance carrier, self-insured employer, or special fund division, at least once every 30 days while the claimant's disability continues, a personally signed report describing the:
 1. Claimant's condition,
 2. Nature of treatment,
 3. Expected duration of disability, and
 4. Claimant's prognosis.

- 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. 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).
- E. Upon application of a party, the Commission shall authorize a change of physician if:
 1. The Commission determines that the health, life, or recovery of a claimant is retarded, endangered, or impaired;
 2. The attending physician agrees to the change or is unavailable to continue treatment;
 3. The Commission determines that the relationship between the attending physician and claimant renders further progress or improvement unlikely;
 4. The Commission determines that the claimant's 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.

Historical Note

Former Rule 13. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-113 recodified from R4-13-113 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-114. Examination at Request of Commission, Carrier or Employer; Motion for Relief

- A. If the Commission or a party requests an examination of a claimant 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 conducting the examination at least 15 days before the scheduled date of the examination.
- B. If a claimant unreasonably fails to attend or promptly advise of the claimant's inability to attend an examination under this Section, 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.

- 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.
- E. To protect a claimant 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 only on specified terms and conditions, including a designation of the time, place, and examining physician.
- F. A claimant requesting protection under subsection (E) shall file a motion with the presiding administrative law judge or chief administrative law judge if a judge has not been assigned to the case, within three days after the claimant receives notice of the examination. The claimant shall serve a copy of the motion on all parties. 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.

Historical Note

Former Rule 14. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-114 recodified from R4-13-114 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-115. Request to Leave the State

- 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.

Historical Note

Former Rule 15. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-115 recodified from R4-13-115 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. If a claimant is directed by a carrier, self-insured employer, or special fund division to report for a medical examination or

treatment in a locality other than either the claimant's current place of residence or employment, the carrier, self-insured employer, or special fund division shall pay, in advance, the claimant's travel expenses from either the claimant's current place of residence or employment, whichever route of travel is required.

- B. For purposes of this Section, "travel expenses" means those expenses required to be paid under A.R.S. § 23-1026.
- C. The carrier, self-insured employer, or special fund division shall calculate travel expenses using the current rates applicable to state employees.

Historical Note

Former Rule 16. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Correction to subsection (A) as certified effective March 1, 1987 (Supp. 88-4). R20-5-116 recodified from R4-13-116 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. A carrier, self-insured employer, or special fund division, shall pay bills for medical, surgical, and hospital benefits provided under A.R.S. § 23-901 et seq. according to applicable medical and surgical fee schedules adopted by the Commission and in effect at the time the services are rendered. A physician or provider of nursing, hospital, drug or other medical services shall itemize and submit a bill for payment only to the responsible carrier, self-insured employer, or special fund division.
- B. 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.
- C. If a claimant pays a bill described in subsection (A), the responsible carrier, self-insured employer, or special fund division shall reimburse the claimant the amount allowed by the fee schedules, provided that the claimant presents receipted vouchers or other proof of payment to support the 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.
- E. An insurance carrier, self-insured employer, or special fund division may pay any authorized burial expenses directly to the funeral service professional.
- F. If an employee's dependent pays burial expenses, the responsible carrier, self-insured employer, or special fund division shall reimburse the dependent the amount authorized by A.R.S. § 23-1046 provided that the dependent presents proof of payment to support 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.

Historical Note

Former Rule 17. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-117 recodified from R4-13-117 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. If a notice of claim status accepting a claim for benefits is final, any subsequent notice of claim status that changes a 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 notice of claim status. This subsection does not apply to a subsequent notice that affects the entitlement to or amount of death benefits. The Commission may for good cause relieve a carrier or self-insured employer of the effect of this subsection.
- B. If a notice of claim status or other determination issued by a carrier, self-insured employer, or special fund division, is based upon a physician's report:
 - 1. The carrier or self-insured employer shall attach a copy of the physician's complete report to the notice of claim status or other determination sent to the Commission; and
 - 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).
- C. If a carrier, self-insured employer, or special fund division pays compensation to a claimant:
 - 1. The carrier or self-insured employer shall close the claim by issuing a notice of claim status; and
 - 2. The special fund division shall close the claim by issuing a notice of determination.
- D. The inadvertent failure of a carrier, self-insured employer, or special fund division to comply with subsection (B) shall not affect the validity of a notice or determination if the 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.

Historical Note

Former Rule 18. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-118 recodified from R4-13-118 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the appropriate workers' compensation carrier, or self-insured employer, 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. 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.
- C. If a lawsuit is filed against a third party, the claimant or the claimant's attorney shall provide copies of pleadings and all offers of settlement to the workers' compensation carrier, self-insured employer, or special fund division to whom notice is required under subsections (A) and (B).

Historical Note

Former Rule 19. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-119 recodified from R4-13-119 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-120. Settlement Agreements, Compromises and Releases

- A. No settlement agreement, compromise, or waiver of rights of a workers' compensation claim, will be valid unless approved by the Commission.
- B. The acceptance of any payments or the signing of a settlement agreement, compromise, release or waiver of rights, unless approved by the Commission, shall not release the employer or his insurance carrier from any obligation imposed by the Workers' Compensation Law.
- C. The carrier or employer shall not be entitled to a credit for any sums paid to an employee under a settlement agreement which has not been approved by the Commission.

Historical Note

Former Rule 20. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-120 recodified from R4-13-120 (Supp. 95-1).

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

- A. The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.
- B. The Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on the following formula: The mean average of the three-month Treasury Bill rate on December 31 of each of the five years prior to July 1 of the current year. The rate, once calculated, is effective until the Commission calculates a new rate under this subsection. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.

Historical Note

Former Rule 21. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-121 recodified from R4-13-121 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 724, effective February 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2973, effective July 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4139, effective November 6, 2007 (Supp. 07-4).

R20-5-122. Lump Sum Commutation

- A. A petition for a lump sum commutation in an unscheduled case shall not be approved unless the carrier approves of such petition.
- B. If the lump sum commutation petition is approved by the carrier, the Commission's primary consideration in passing upon the petition will be whether more net income per month will be generated after receipt of the lump sum than the applicant is presently receiving. The granting of a lump sum petition will only be granted if the facts demonstrate a reasonable basis for financial betterment or rehabilitation of the claimant.
- C. The burden of proving that the commutation of compensation satisfies the criteria in (B) is on the applicant.

Historical Note

Former Rule 22. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1).
R20-5-122 recodified from R4-13-122 (Supp. 95-1).

R20-5-123. Rejection of the Act

If an employee serves upon an employer written notice under A.R.S. § 23-906, rejecting the provisions of the Act, the employer shall keep one copy of the rejection in the employer's business records.

Historical Note

Former Rule 23. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-123 recodified from R4-13-123 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. An election by an employee to reject the Act is not 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, the prior rejection is valid and remains in full force and effect.

Historical Note

Former Rule 24. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-124 recodified from R4-13-124 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-125. Rejection Before an Employer Complies with A.R.S. §§ 23-961(A) and 23-906(D)

An employee's rejection of the Act received by an employer before the employer complies with the requirements of A.R.S. §§ 23-961(A) or 23-906(D) is 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).

Historical Note

Former Rule 25. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-125 recodified from R4-13-125 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-126. Revocation of Rejection

- A. An employee who rejects the Act may revoke that rejection by serving upon the employee's employer an original and one copy of a written notice of revocation. The written revocation

shall state that the employee revokes the employee's prior rejection of the Act.

- B. Within five days after receiving a written notice of revocation, an insured employer shall file with the employer's carrier, or workers' compensation pool, a copy of the notice of revocation. The employee has all rights to compensation and benefits provided by the Act for any injury that occurs after the employee serves the revocation notice upon the employer.

Historical Note

Former Rule 26. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-126 recodified from R4-13-126 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-127. Insurance Carrier 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 the Commission. The carrier shall provide the information on or in the same format as Commission form 0006. Form 0006 is available upon request from the Commission.
- B. Failure to comply with this Section does not affect the validity of coverage.

Historical Note

Former Rule 27. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-127 recodified from R4-13-127 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-128. Medical Information Reproduction Cost Limitation; Definition of Medical Information

- 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.

Historical Note

Former Rule 28. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-128 recodified from R4-13-128 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. The Commission deems an insurance carrier or workers' compensation pool the agent of an employer insured by the carrier or workers' compensation pool.
- B. The Commission also deems any action or determination taken or made by the insurance carrier or workers' compensation pool binding upon the employer. The employer may not protest or petition the Commission for relief concerning an action or determination taken by the employer's insurance carrier or workers' compensation pool unless the employer notifies the carrier or workers' compensation pool, and the Commission in writing that the employer disagrees with the carrier's or worker's compensation pool's action or determination within the time described in A.R.S. § 23-947.
- C. This Section does not apply to employers insured under a Self-Rating Insurance Plan.

Historical Note

Former Rule 29. Amended subsection (A) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-129 recodified from R4-13-129 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. Except as provided in subsection (B), each carrier that has or is underwriting workers' compensation insurance in Arizona, and each employer and workers' compensation pool that has been granted authority to act as a self-insurer by the 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 the workers' compensation claims files described in R20-5-131 in its Arizona office. A carrier, self-insured employer, and self-insured workers' compensation pool shall notify the claims division of the Commission of the address of the Arizona claims office.
- 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.
- F. For claims processing purposes, 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.

Historical Note

Former Rule 30. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-130 recodified from R4-13-130 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-131. Maintenance of Carrier and Self-insured Employer Claims Files; 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 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 carrier or self-insured employer.
- B. Subject to subsection (C), all parties, authorized representatives of parties, and authorized representatives of the Commission may inspect and copy items contained in a carrier's or self-insured employer's claims file within five days from the date the item is filed in the claims file.
- 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 within 10 days after receiving a request from any party, authorized representative of a party, and authorized representative of the Commission at a charge not to exceed \$.25 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.
- E. A carrier or self-insured employer is not required to maintain a claims file, or produce for inspection and copying:

1. Documents or matters representing the work product of the carrier or self-insured employer;
 2. Documents or matters representing the work product of a carrier's or self-insured's attorney; or
 3. Investigation and rehabilitation 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).

Historical Note

Former Rule 31. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-131 recodified from R4-13-131 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-132. Parties' Notice to Commission of Intention to Impose Liability upon A.R.S. § 23-1065 Special Fund

If the notices required by A.R.S. § 23-1065 are not given to the Commission, the Commission shall not be bound by the testimony and evidence presented at a hearing as it relates to the imposition of liability upon the special fund.

Historical Note

Former Rule 32. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-132 recodified from R4-13-132 (Supp. 95-1).

R20-5-133. Claimant's Petition to Reopen Claim

- A. A petition to reopen filed with the Commission under A.R.S. § 23-1061(H) shall be in writing, signed, and dated by the claimant or the claimant's authorized representative. A petition to reopen form is available from the Commission upon request.
- 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.
- C. If the Commission does not receive the medical report described in subsection (B) within 14 days of receipt of a petition to reopen, the Commission shall notify all parties, in writing, that it has received a petition to reopen without the required medical report. A carrier or self-insured employer is not required to act on a petition to reopen that is received without the required medical report.
- D. If the Commission receives a medical report in support of a petition to reopen and a claimant does not file a petition to reopen within 14 days of receipt of the medical report, the Commission shall forward the medical report to the carrier or self-insured employer for information purposes only. A carrier or self-insured employer is not required to take any action upon receipt of the medical report.
- E. If the Commission receives a medical report in support of a petition to reopen from an out-of-state physician and a party objects to the report at least 20 days before a scheduled hearing, the Commission shall not consider the report or place the report in evidence unless the party submitting the report produces the author of the report for cross-examination either at the hearing or at a deposition. 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.

Historical Note

Former Rule 33. Amended subsections (A), (C), (D) and (E) effective March 1, 1987, filed February 26, 1987

(Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-133 recodified from R4-13-133 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. A petition for rearrangement or readjustment of compensation filed with the Commission under A.R.S. § 23-1044(F) shall be in writing. A form is available from the Commission upon request.
- B. A party or a party's authorized representative shall sign a petition for rearrangement or readjustment and include in the petition:
 1. A statement of the basis upon which the rearrangement or readjustment of compensation is sought, and
 2. Documentation in support of the petition.
- C. The petition 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 of compensation is sought accompanied by supportive documentary evidence.
- D. If a self-insured employer, carrier, special fund division, or uninsured employer requests a hearing protesting the Commission's determination under A.R.S. § 23-1044(F) and the claimant resides outside of Arizona, the Commission may order the self-insured employer, carrier, special fund division, or uninsured employer to pay the claimant's transportation and living expenses to attend any scheduled hearing.

Historical Note

Former Rule 34. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-134 recodified from R4-13-134 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-135. Requests for Hearing; Form

- A. Any interested party or the party's authorized representative, except as otherwise provided by law or this Article, may request a hearing on a claim. A request for hearing shall be in writing.
- B. A Request for Hearing form is available upon request from the Commission and requests the following:
 1. Employee, employer, insurance carrier, authorized representative, and claim identification;
 2. Issue upon which the request for hearing is filed;
 3. Requests for subpoenas of witnesses;
 4. Desired location and length of time for the hearing;
 5. Signature and address of requesting party.

Historical Note

Former Rule 35. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-135 recodified from R4-13-135 (Supp. 95-1).

R20-5-136. Time Within Which Requests for Hearing Shall be Filed

All requests for hearing shall be filed with the Commission as required under A.R.S. § 23-947 or other applicable law.

Historical Note

Former Rule 36. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-136 recodified from R4-13-136 (Supp. 95-1). Amended by final

rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-137. Service of a Request for Hearing

A party filing a request for hearing shall serve a copy of the party's request for hearing upon all other parties at the same time that the party files the request for hearing with the Commission. The failure to serve a copy of a request for hearing upon other parties does not affect the validity of the hearing request.

Historical Note

Former Rule 37. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-137 recodified from R4-13-137 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. The chief administrative law judge shall maintain a hearing calendar. The chief administrative law judge shall ensure that a request for hearing filed in accordance with this Article is:
 1. Placed on the hearing calendar, and
 2. Assigned to an administrative law judge who is designated as the presiding administrative law judge.
- B. A presiding administrative law judge may hold a hearing at an earlier date than required under A.R.S. § 23-941(D), if all parties to the proceeding agree.

Historical Note

Former Rule 38. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-138 recodified from R4-13-138 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. At any time before the filing of a request for hearing, parties may resolve issues by written stipulation. The parties shall file the stipulation with the Commission for approval or other action as may be appropriate.
- B. 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 a request for hearing or hearing.

Historical Note

Former Rule 39. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-139 recodified from R4-13-139 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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 party may request that a pending hearing be disposed of by an informal conference, by filing a written 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.

- 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.
- D. If a presiding administrative law judge disposes of issues in controversy at an informal conference, the presiding administrative law judge may enter an award without convening a hearing.
- E. If a presiding administrative law judge disposes of, narrows, or limits some, but not all issues in controversy, the presiding administrative law judge shall prepare and mail to the parties a statement setting forth the issues to be resolved at a hearing. The presiding administrative law judge shall limit the hearing to the issues contained in the statement unless at the hearing all parties and, the presiding administrative law judge agree that the judge may consider issues beyond the scope of the statement.
- F. Upon request 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.

Historical Note

Former Rule 40. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-140 recodified from R4-13-140 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-141. 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 to compel the appearance of a non-medical witness by filing a written request with the presiding administrative law judge at least 10 days before the date of the first scheduled hearing.
 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 expert medical witness by filing a written request with the presiding administrative law judge at least 20 days before the date of the first scheduled hearing.
 3. Statement of expected testimony. In the discretion of the presiding administrative law judge, the judge may order the party requesting a subpoena to file within five days of the order a written statement summarizing 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
 - b. The party shows 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).

5. Service of a subpoena. The Commission may serve a subpoena by mail unless the party requesting 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 in the same manner as in a civil action; and
 - b. Pay all expenses of the service.
- B. A presiding administrative law judge shall not grant a party a continued hearing because a subpoenaed witness fails to appear at hearing unless the party filed a timely request for subpoena as required by subsection (A). If a party timely requested a subpoena for a witness who fails to appear at a scheduled hearing, the presiding administrative law judge may 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.
- C. Witness Fees.
 1. If a non-medical witness requests a witness fee, the party requesting the subpoena shall pay the non-medical witness fees and mileage provided for witnesses in civil actions in the Superior Court. If more than one party subpoenas the same witness, the parties shall divide the witness fee equally.
 2. The Commission shall pay the witness fee to a medical witness under the Commission's medical fee schedule after the presiding administrative law judge approves the fee.
- D. Objection to an out-of-state physician's report.
 1. A presiding administrative law judge shall not consider or place into evidence a timely filed physician's report authored by a physician residing outside Arizona if a party files an objection to that report at least 20 days before the scheduled hearing, unless the party submitting the report produces the author for cross-examination either at the hearing or at a deposition.
 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 of a deposition taken under this subsection.
- 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 timely filed document prepared by a non-medical witness who resides outside Arizona if a party files an objection to that document at least seven days before the scheduled hearing unless the party submitting the document produces the author for cross-examination either at the hearing or at a deposition.
 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 of a deposition taken under this subsection.
- F. If a presiding administrative law judge approves, the testimony of a party's out-of-state non-medical or expert medical witness may be taken telephonically.

Historical Note

Former Rule 41. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-141 recodified

from R4-13-141 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-142. In-State Oral Depositions

- A. A party may take the oral deposition of another party or a witness residing in Arizona by serving a Notice of Deposition by Oral Examination upon the deponent and every party at least 10 days before the date of the oral deposition and at least 40 days before 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 Deposition. 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 on all parties.
- 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 to the taking of an oral deposition within seven days after a party files a written objection by:
 1. Ordering the deposition to proceed;
 2. Ordering the deposition not be taken; or
 3. Entering any other appropriate protective order.
- D. The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.
- E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other interested party.
- 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.
- G. A deposition taken under this Section shall only be used to impeach 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:
 1. The deponent is deceased at the time of the hearing, or
 2. All parties agree.
- H. A party may take a telephonic deposition under this Section either by agreement of the parties or by order of the presiding administrative law judge in the exercise of the judge's discretion.

Historical Note

Former Rule 42. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-142 recodified from R4-13-142 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-143. Out-of-State Oral Depositions

- A. A party shall obtain permission from a presiding administrative law judge before taking an out-of-state oral deposition of another party or a witness by filing a written request with the presiding administrative law judge that contains:
 1. The name and address of the party or witness to be deposed, and
 2. Each reason why the party's or witness' testimony is necessary.
- B. The party requesting permission to take the out-of-state deposition shall serve a copy of the request upon each party.
- C. If no objection to the request for permission to take the deposition is filed under subsection (D) the presiding administrative law judge shall, within seven days from the date of the request, grant or deny permission to take the deposition.

- D. A party may file with the presiding administrative law judge a written objection to the taking of an out-of-state oral deposition within five days after being served with a request to take the out-of-state deposition. 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.
- 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 to the taking of an out-of-state oral deposition within seven days after a party files the written objection by:
1. Ordering the deposition to proceed,
 2. Ordering the deposition not be taken, or
 3. Entering any other appropriate protective order.
- F. A party shall not take more than two depositions per hearing under this Section unless a presiding administrative law judge, upon a showing of good cause, approves the taking of additional depositions.
- G. In the exercise of discretion, the presiding administrative law judge may admit into evidence a deposition taken under this Section if the transcript of the deposition is filed with the Commission at least five days before any scheduled hearing or as otherwise directed by the presiding administrative law judge. If the transcript of the deposition is not timely filed under this subsection, the administrative law judge shall not consider the deposition for any purpose unless the parties and the administrative law judge agree that the deposition may be considered.
- H. Parties may take telephonic depositions under this Section either by agreement of the parties or by order of a presiding administrative law judge in the exercise of the administrative law judge's discretion.
- I. A party taking a deposition taken under this Section shall comply with R20-5-142(A), (D), (E) and (F).

Historical Note

Former Rule 43. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-143 recodified from R4-13-143 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-144. Written Interrogatories

- A. After a party files a request for hearing with the Commission, any party may serve written interrogatories upon another party. A party shall serve written interrogatories at least 40 days before the scheduled hearing.
- B. A party shall not serve more than 25 interrogatories, including subsections.
- C. A party shall serve answers to the interrogatories upon all parties within 10 days after service of the interrogatories. A party shall not file answers to the interrogatories with the Commission.
- D. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to answer interrogatories under this Section.
- E. A party shall only use written interrogatories served under this Section to impeach 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 the party answering the interrogatories is deceased at the time of the scheduled hearing.

Historical Note

Former Rule 44. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-144 recodified from R4-13-144 (Supp. 95-1). Amended by final

rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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

- A. If a party or deponent refuses to answer any question asked at a deposition under R20-5-142 or R20-5-143, the party asking the question shall either complete the deposition in other matters or adjourn the deposition. With notice to all persons affected by the deponent's refusal to answer a question, the party asking the question may apply to the presiding administrative law judge for an order compelling the deponent to answer the question.
- B. If a party refuses to answer an interrogatory served under R20-5-144, the party serving the interrogatory may submit the interrogatory to the presiding administrative law judge and apply for an order compelling the answer.
- C. If a presiding administrative law judge issues an order compelling an answer under subsection (A) or (B) and finds that a refusal to answer is without substantial justification, the presiding administrative law judge shall require the party or witness refusing to answer or the authorized representative advising that party or witness not to answer, or both of them, to pay to the party asking the question:
1. Reasonable attorney's fees incurred to obtain the order compelling the answer, and
 2. Reasonable expenses that will be incurred to obtain the requested answer.
- D. If a presiding administrative law judge denies a motion to compel an answer under subsection (A) or (B), and finds that the motion was made without substantial justification, the presiding administrative law judge shall require the party filing the motion, or the parties' authorized representative advising that party to make the motion, or both of them, to pay to the party or witness refusing to answer, reasonable attorney's fees incurred in opposing the motion.
- 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 party, or an officer or managing agent of that party, willfully fails to appear for a deposition after being served with proper notice of the deposition, or fails to serve answers to interrogatories after proper service of the interrogatories:
1. Strike out all or any part of a document filed by the party;
 2. Dismiss the action or proceeding, or any part of the action or proceeding;
 3. Order the suspension or forfeiture of compensation; or
 4. Preclude the introduction of evidence.
- 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.

Historical Note

Former Rule 45. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-145 recodified from R4-13-145 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-146. Repealed

Historical Note

Former Rule 46. R20-5-146 recodified from R4-13-146 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17,

2001 (Supp. 01-3).

R20-5-147. Videotape Recordings and Motion Pictures

- A. A 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 the first scheduled hearing.
- 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, 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 videotape recording or motion picture no later than 25 days before the first scheduled hearing.
- C. A presiding administrative law judge may admit into evidence a videotape recording or motion picture if the videotape recording or motion picture:
 - 1. Is a reasonable and accurate representation of the scene, person, object, or action portrayed; and
 - 2. Will 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, interrogation, dialogue, or testimony are not a part of the videotape recording or motion picture.
- 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.
- F. This Section does not apply to:
 - 1. Videotape recordings or motion pictures obtained by surveillance, or
 - 2. Videotape recordings or motion pictures of medical procedures performed by a physician.

Historical Note

Former Rule 47. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-147 recodified from R4-13-147 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-148. Burden of Presentation of Evidence; Offer of Proof

- A. A party shall rest at the conclusion of the presentation of the party's evidence. If there is a dispute as to which party has the burden of proof, the presiding administrative law judge shall direct who has the burden of proof.
- B. If a presiding administrative law judge prohibits a witness from answering a question, the presiding administrative law judge shall permit an offer of proof in the form of an avowal or in writing.

Historical Note

Former Rule 48. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-148 recodified from R4-13-148 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-149. Presence of Claimant at Hearing; Notice of a Parties' Non-Appearance at Hearing; Assessment of Hearing Costs for Non-Appearance

- A. A claimant, 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.

Historical Note

Former Rule 49. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-149 recodified from R4-13-149 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-150. Joinder of a Party

- A. An administrative law judge may join as a party any person, firm, corporation, or other entity in favor of whom or against whom a right to relief may exist and over whom the Commission may acquire jurisdiction.
- B. Joinder may be made upon application of any party or upon the presiding administrative law judge's own motion.
- C. A party seeking to join another person, firm, corporation, or other entity 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.
- D. If the requirements of this Section are met, 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.

Historical Note

Former Rule 50. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-150 recodified from R4-13-150 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-151. Special Appearance

Any party against whom a claim may exist under the Act, or against whom a contingent liability may exist under the Act, and over whom the Commission has not acquired jurisdiction, may enter a special appearance. A special appearance made under this Section does not invoke the jurisdiction of the Commission.

Historical Note

Former Rule 51. R20-5-151 recodified from R4-13-151 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-152. Resolution of Issues by Stipulation After the Filing of a Request for Hearing; Notice of Resolution; Assessment of Hearing Costs

- A. Subject to the requirement of subsection (D), parties may stipulate to any fact or issue after a party files a request for hearing. The stipulation may be in writing or made orally at the time of hearing.
- B. A stipulation is binding upon the parties unless a presiding administrative law judge or the Commission grants the parties permission to withdraw the stipulation.
- C. If a stipulation is not reasonably supported by the evidence, a presiding administrative law judge or the Commission, may set aside or refuse to accept the stipulation and proceed to determine 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.
- E. The presiding administrative law judge may order a party or parties to reimburse the Commission for hearing expenses and costs incurred by the Commission including 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).

Historical Note

Former Rule 52. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-152 recodified from R4-13-152 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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 discretion, grant or deny the request. If the request is granted, the presiding administrative law judge shall admonish each witness not to discuss the witness's testimony with anyone other than attorneys on the case.

Historical Note

Former Rule 53. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-153 recodified from R4-13-153 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-154. Correspondence to Administrative Law Judge

A person submitting correspondence, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence upon all other parties, or if represented, the parties' authorized representatives. The administrative law judge shall not consider correspondence or subpoena requests to be evidence except by agreement of all parties to the matter.

Historical Note

Former Rule 54. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-154 recodified from R4-13-154 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-155. Filing of Medical and Non-Medical Reports Into Evidence; Request for Subpoena 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 or hospital record into evidence ("medical report") that is not already contained in the Commission's claims file, shall file the medical report with the presiding administrative law judge at least 25 days before the 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 to all other parties.
- D. A presiding administrative law judge shall not receive into evidence any medical or non-medical report that is not filed as required under this Section. If the report has been placed in the

Commission's claims file, the presiding administrative law judge shall remove the report from the Commission's claims file and return the report to the filing party.

- E. The presiding administrative law judge may suspend the requirements 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.
- F. The party filing a medical or non-medical report under this Section 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.
- G. A party seeking to cross-examine the author of any medical or non-medical report filed into evidence shall request a subpoena under R20-5-141.
- H. If a party fails to timely request a subpoena under this Section and R20-5-141, the party waives the right to cross-examine the author of any medical or non-medical report filed into evidence and the presiding administrative law judge shall admit the medical or non-medical report in evidence.

Historical Note

Former Rule 55. Amended subsections (A) and (D) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-155 recodified from R4-13-155 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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.
- B. If at the conclusion of a hearing a party seeks to continue the hearing to introduce additional evidence, the party shall state specifically and in detail:
 1. The nature and substance of the additional evidence,
 2. The names and addresses of additional witnesses, and
 3. The reason the party was unable to produce the evidence or witnesses at the hearing.
- C. A presiding administrative law judge may deny a request for a continuance under subsection (B) if the presiding administrative law judge determines that, with the exercise of due diligence, the evidence or testimony could have been produced or the evidence or testimony would be cumulative, immaterial, or unnecessary.
- D. A presiding administrative law judge may, on the judge's own motion, continue a hearing and order further examinations or investigations that the judge determines are warranted.
- E. If more than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing discovery and filing deadlines under this Article 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 discovery and filing deadlines under this Article shall be calculated with respect to the original hearing date.

Historical Note

Former Rule 56. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-156 recodified from R4-13-156 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-157. Sanctions

- A. A presiding administrative law judge may impose the following sanctions against any party or authorized representative of

a party who fails to comply with 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.

- B.** If a party shows good cause, a presiding administrative law judge or the Commission may relieve a party of sanctions imposed under subsection (A).

Historical Note

Former Rule 57. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-157 recodified from R4-13-157 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-158. Service of Awards and Other Matters

- A.** An award, decision, order, subpoena, notice, document, or other matter required by the Act, this Article, or other law to be served shall be made upon a party or, if represented, the party's authorized representative. Service upon the authorized representative is service upon the party.
- B.** Service may be made and is deemed complete by:
1. Depositing the document or matter in the United States mail, with postage prepaid, addressed to the party served at the address as shown by the records of the Commission; or
 2. Personal service in the same manner as a summons is served in a civil action.
- C.** Proof of service may be made by an affidavit or oral testimony of the person making such service.

Historical Note

Former Rule 58. Amended subsection (C) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-158 recodified from R4-13-158 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-159. Record for Award or Decision on Review

A presiding administrative law judge's award or decision under A.R.S. § 23-942 or award or decision upon review under A.R.S. § 23-943 shall be based upon:

1. The record as it exists at the conclusion of the hearings, and
2. Any memoranda provided under A.R.S. § 23-943(E) or requested by the presiding administrative law judge.

Historical Note

Former Rule 59. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-159 recodified from R4-13-159 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-160. Application to Set Attorney Fees Under A.R.S. § 23-1069

- A.** 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, the insurance carrier, self-insured employer, or special fund division.

- C.** Upon the filing of an application, the attorney and claimant shall, provide information to the Commission to enable the Commission to award reasonable attorney's fees.
- D.** Attorney's fees awarded under this Section shall be set by the Commission, an administrative law judge, or other authorized representative of the Commission.

Historical Note

Former Rule 60. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-160 recodified from R4-13-160 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-161. Stipulations for Extensions of Time

Stipulations for extensions of time in which to file papers or briefs in the various courts shall be received and signed by the Chief Counsel or other members of the Legal Department.

Historical Note

Former Rule 61. R20-5-161 recodified from R4-13-161 (Supp. 95-1).

R20-5-162. Legal Division Participation

The chief counsel and other members of the legal staff of the Commission who participate in proceedings or matters under the Act and this Article do so on behalf of the Commission.

Historical Note

Former Rule 62. R20-5-162 recodified from R4-13-162 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

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 "bad faith" if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Institutes a proceeding or interposes a defense that is not:
 - a. Well-grounded in fact;
 - b. Warranted by existing law; or
 - c. A good faith argument for the extension, modification, or reversal of existing law;
 2. Unreasonably delays:
 - a. Payment of benefits; or
 - b. Authorization for, or receipt of, medical benefits or treatment;
 3. Unreasonably underpays benefits;
 4. Unreasonably terminates benefits;
 5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
 6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under 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 "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Unreasonably issues a notice of claim status without adequate supporting information in its possession or available to it;
 2. Unreasonably fails to acknowledge 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;
 4. Directly advises a claimant not to consult or obtain the services of an attorney; or
 5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.
- C. A person alleging bad faith or unfair claim processing practices ("complainant") shall file a written complaint with the claims manager of the Commission. The complainant, or the complainant's authorized representative, shall sign the complaint.
- D. The complaint shall describe the specific actions of the employer, self-insured employer, insurance carrier, or claims processing representative, that 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 claims manager of the Commission shall serve the complaint upon all parties.
- F. If the Commission acts on its own motion under 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;
 2. Self-insured employer;
 3. Insurance carrier; or
 4. Claims processing representative.
- G. The person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section shall file with the claims manager a written response to the complaint or notice, 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.
- 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 the absence of a response 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 shall enter an award as it deems, in its discretion, appropriate under A.R.S. §§ 23-930(B) or (C).

Historical Note

Adopted as an emergency effective February 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Amended and readopted as an emergency effective April 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Readopted without change as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Readopted without change as an emergency effective November 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended and readopted as an emergency effective July 11, 1989 (Supp. 89-3). Adopted as a permanent rule effective October 4, 1989 (Supp. 89-4). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-164. Human Immunodeficiency Virus, Hepatitis C, Methicillin-resistant *Staphylococcus Aureus*, Spinal Meningitis and Tuberculosis; Significant Exposure; Employee Notification; Reporting; Documentation; Forms

- A. An employer subject to the Act shall notify its employees of the requirements of A.R.S. §§ 23-1043.02, 23-1043.03, and 23-1043.04 by posting the Commission notices titled "Work Exposure to Bodily Fluids" and "Work Exposure to methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" in a conspicuous place immediately next to the "Notice to Employees" notice required under A.R.S. § 23-906(D).
- B. Properly posted "Work Exposure to Bodily Fluids" and "Work Exposure to Methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" notices constitute sufficient notice to employees of the requirements of a prima facie case under A.R.S. §§ 1043.02(B), 23-1043.03(B), and 23-1043.04(B).
- C. An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the notices specified in subsection (A) to the employer. These notices are also available from the Commission upon request.
- D. An employer shall make readily available to its employees the Commission form described in R20-5-106 titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material." An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" to the employer. This form is also available from the Commission upon request.
- E. If an employee sustains a significant exposure as defined in A.R.S. §§ 23-1043.02(G), 23-1043.03(G), or 23-1043.04(H)(2), the employee shall complete, date, and sign a "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form. The employee or employee's authorized representative shall give to the employer the completed, dated, and signed form. 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 the requirements to report an injury or file a claim under the Act.
- F. If an employee submits a written report of a significant exposure to an employer, but does not use the Commission form titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material," the employer shall provide the employee the Commission form within five calendar days after receiving the employee's initial written report.
- G. The date of the receipt by the employer or its authorized representative of the employee's initial report is the date used to compute the time period prescribed in A.R.S. §§ 23-1043.02(B)(2), 23-1043.03(B)(2), and 23-1043.04(B)(2) if:
1. The initial report contains the information required in the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form, or
 2. The employee gives to the employer the completed Commission form within 10 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 A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B).
- I. In investigating the circumstances and facts surrounding an employee's report to an employer of a significant exposure under A.R.S. §§ 23-1043.02(C), 23-1043.03(C), and 23-1043.04(C), the employer, or its carrier, or any 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, or any witness or alleged source of exposure, may have or did contract the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, methicillin-resistant *Staphylococcus aureus*, spinal meningitis, or tuberculosis. However, an employer, its carrier or their respective attorneys, may:

1. Direct an agent to investigate the employee's report of significant exposure, and
2. 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.

Historical Note

Adopted effective April 9, 1992 (Supp. 92-2). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

R20-5-165. Calculation of Maximum Average Monthly Wage

In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. § 23-1041(E), the Commission shall use the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers*, available at <http://www.bls.gov/>.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1925, effective July 10, 2013 (Supp. 13-3).

ARTICLE 2. SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01

R20-5-201. Definition of Self-insurer

"Self-insurer" or "self-insured" means an individual employer or a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers' compensation.

Historical Note

Former Rule I. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-201 recodified from R4-13-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4).

R20-5-202. Self-insurance Application; Requirements

- A. All applicants who initially apply for self-insurance on or after the certification of the 1993 rule amendments by the Attorney General and filing of those amendments with the Secretary of State shall:

1. Complete, date, sign, and file with the Commission an application for authority to self-insure on a form that can be obtained from the Commission and contains the following information:
 - a. Applicant identification including names, addresses, corporation, subsidiary, and partnership information;
 - b. Nature of business;
 - c. History of business in Arizona and elsewhere;
 - d. Payroll data;
 - e. Work force data;
 - f. Insurance data;
 - g. Claims history;

- h. Method proposed to finance self-insurance liability and reserves;
- i. Program for compliance with occupational safety and health standards, rules, and laws of this state;
- j. Program to finance medical, surgical, and hospital benefits including information on organization responsible for processing claims;
- k. Names and addresses of Arizona agents upon whom legal notice of proceedings before the Commission is served;
 - l. Authorization for signator;
 - m. Authorization by corporate resolution, or board of trustees resolution, if applicable; and
 - n. Statement attesting to the truthfulness of the information in the application.

2. Maintain an office in Arizona. Payroll reports and other materials relating to the calculation of premiums shall be readily available at this office for inspection and audit by the Commission or its authorized representative.

3. In the first year of operation, obtain a guaranty bond and specific excess insurance or excess of loss insurance in an amount as provided in R20-5-206(D)(1) to adequately protect against catastrophic losses. Starting with the second year of operation, an individual self-insurer shall choose one of the two options provided in R20-5-206(D). The insurance shall contain:
 - a. A 60-day notice of termination; and
 - b. A provision that insolvency of the self-insurer does not relieve the excess insurer of liability assumed under the contract.

- B. An individual applicant for self-insurance that is not a member of a workers' compensation pool, in addition to complying with subsection (A) of this rule, shall:

1. Have been engaged in business in Arizona for at least five years prior to the date of application.
2. Provide an annual payroll in this state of at least \$2,000,000 (this payroll may include the combined payrolls of all subsidiary companies carried under the self-insurance authorization; the requirements of this subsection do not apply to political subdivisions of this state) and meet either of the following thresholds:
 - a. Total reported assets of at least \$50,000,000; or
 - b. Combination of \$10,000,000 in net worth and a cash flow ratio of .25.

3. Provide the Commission with an internally certified copy of the employer's audited or reviewed financial statements for the most current and prior two years. The Commission's review of the applicant's financial statements includes the following:

- a. Calculation of the following ratios:
 - i. Cash Flow Ratio - Cash flow from operations divided by current liabilities which is an indication of the ability of the applicant to meet current obligations out of cash flow.
 - ii. Current Ratio - Current assets divided by current liabilities which indicate the applicant's ability to service current obligations.
 - iii. Debt Status Ratio - Net worth divided by total liabilities which indicate the proportion of funds supplied by the applicant relative to the funds supplied by creditors.
 - iv. Profitability Ratio - Profit before taxes, divided by total assets, multiplied by 100 which measures the return on assets and the efficiency of assets employed by the firm.

- v. Quick Ratio - Cash and equivalents, plus trade receivables, divided by current liabilities which express the degree to which the applicant's liabilities are covered by the most liquid current assets.
 - vi. Working Capital Ratio - Working capital divided by sales which measures the sufficiency of working capital to support sales.
 - b. Comparison of the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry.
 - c. Review of notes to the financial statement.
 - d. Review of management report of operation and other information published in the annual statement.
 - 4. Provide the Commission with the names of all other jurisdictions in which it has been granted authority to self-insure and the effective dates of such authorization.
 - 5. Provide the Commission with the names of all other jurisdictions in which its application to self-insure has been denied or its authority to self-insure has been suspended or revoked, and the dates and reasons for such denials, suspensions, or revocations.
- C.** In addition to the requirements of subsection (A), a workers' compensation pool applicant for self-insurance shall:
- 1. File with the application for self-insurance a completed indemnity agreement on a form that can be obtained from the Commission, signed by a duly authorized agent of the pool jointly and severally binding the pool and each of its members to comply with the provisions of A.R.S. Title 23, Chapter 6 and rules adopted pursuant to Chapter 6. The indemnity agreement shall contain the following information:
 - a. Name of the group, with names of trustees and members;
 - b. Amount of the corporate surety bond;
 - c. Name of the service agent of the group, including a description of the agent's duties and responsibilities; and
 - d. Statement that the group will defend and assume liabilities in the name of and on behalf of any member of the group.
 - 2. Provide a copy of the most recently audited financial report of the pool prepared by a certified public accountant, including a copy of the examination report prepared by the Department of Insurance and that Department's recommendations, if any.
 - 3. Provide the names and addresses of the members of the board of trustees of the pool.
 - 4. Provide the agreement indicating the terms and conditions of coverage within the pool including any exclusions of coverage.
 - 5. An intergovernmental agreement filed with the Commission pursuant to A.R.S. § 11-952.01(G)(7) shall contain the provisions of A.R.S. § 11-952.01(I).
- required by R20-5-206(D) for the payment of workers' compensation liabilities. The Option Election form shall list the following:
- a. Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;
 - b. Amount of future reserves;
 - c. Amount of calculated bond based on the amount of total estimated future liability x 125%.
- For those self-insurers complying with R20-5-206(D)(1), the self-insurer shall additionally provide a certificate of excess insurance.
- 2. Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.
 - 3. Submit a copy of the most recent certified annual financial statement at least 30 days prior to the anniversary date of the authorization to self-insure. A parent company that has executed a guaranty for a subsidiary shall also submit a copy of its most recent certified annual financial statement within the same time period required by this subsection.
 - 4. Provide a Guaranty To Satisfy Compensation Claims Under Workers' Compensation Act in Arizona form as provided in R20-5-206(C) completed, signed, and dated by the parent company of a subsidiary self-insurer if the parent company of the self-insurer is different from the last filing approved by the Commission.
- B.** All workers' compensation pool applicants for self-insurance renewal authority shall:
- 1. Provide information to the Commission as required under subsections (A)(1), (2), and (3).
 - 2. Provide an updated indemnity agreement pursuant to R20-5-202(C)(2) for changes occurring since the last filing approved by the Commission.
- C.** All applicants for renewal shall continue to maintain an office in Arizona as described in R20-5-202(A)(2).
- D.** The Commission's analysis for renewal includes the following:
- 1. A review of the items required by R20-5-202(A).
 - 2. A review of the claims profile which includes a review of the preceding year's claims filed, claims denied, and denial rate. Denial rates in excess of 8% require additional analysis by the Commission's Claims Division to establish the reasons for the denials.
 - 3. A review of the self-insurer's financial profile which includes a review of the financial data as described in R20-5-202(B)(3).

Historical Note

Former Rule III. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-203 recodified from R4-13-203 (Supp. 95-1).

R20-5-204. Denial of Authorization to Self-insure

If the Commission denies an application for authorization to self-insure for failure to comply with A.R.S. § 23-961(A)(2) or for failure to comply with the requirements of R20-5-202 or R20-5-203, the Commission shall issue an Order to the applicant refusing authorization to self-insure. An appeal of such denial may be made pursuant to A.R.S. § 23-945.

Historical Note

Former Rule IV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-204 recodified from R4-13-204 (Supp. 95-1).

Historical Note

Former Rule II. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-202 recodified from R4-13-202 (Supp. 95-1).

R20-5-203. Self-insurance Renewal Application; Requirements

- A.** All individual applicants for self-insurance renewal authority shall:
- 1. Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as

R20-5-205. Resolution of Authorization

If the Commission grants authorization to self-insure, a Resolution of Authorization to Self-insure will be issued. The issuance of the Resolution shall be conditioned upon the deposit with the Commission, prior to the effective date stated in the Resolution, of the bonds or other securities specified by A.R.S. § 23-961(A)(2) and this Article.

Historical Note

Former Rule V. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-205 recodified from R4-13-205 (Supp. 95-1).

R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts

- A. Any guaranty bond filed with the Commission shall bear the same effective date as the effective date of the Resolution of Authorization to Self-insure and shall be for a minimum of one year, subject to annual renewal.
- B. A guaranty bond shall be made by a company authorized and licensed to transact the business of fidelity and surety insurance in Arizona. The guaranty bond shall be executed by a duly authorized agent of the surety and be countersigned by a licensed resident agent. A bond form can be obtained from the Commission and contains the following information:
 1. Applicant identification;
 2. Amount of the bond;
 3. Conditions of the bond obligations; and
 4. Statement regarding responsibility for fees and costs associated with collection of the bond and responsibility for payment of any award or judgment against the surety.
- C. For the Commission to issue a Resolution of Authorization to Self-insure to a subsidiary company, the parent company shall first execute a guaranty for the subsidiary on a form that can be obtained from the Commission. The parent company shall submit its most recent audited financial statement to the Commission for analysis to determine the ability of the parent company to meet its obligations under the guaranty and under A.R.S. § 23-961(A)(2). The guaranty shall state that the parent company agrees and guarantees on behalf of the subsidiary that any and all liabilities against the subsidiary, under or by virtue of the Workers' Compensation Laws of Arizona, shall be promptly and fully paid, and the subsidiary company has on deposit a guaranty bond or securities. The guaranty for a subsidiary company, and the Resolution of Authorization to Self-insure issued to such subsidiary company, shall be valid and effective only as long as the parent company has on file with the Commission a valid guaranty to satisfy compensation claims of the subsidiary. A parent company is one which owns sufficient stock in the subsidiary company to control the subsidiary and does not mean a company in which all or a majority of the stockholders are the same as in the subsidiary. The guaranty shall be accompanied by a verified certificate as to stock ownership of the subsidiary, a certified copy of the charter or articles of incorporation of the parent company and a certified copy of the resolution of the directors of the parent company authorizing a designated officer to execute the guaranty.
- D. In compliance with this Article and the Workers' Compensation Laws of Arizona, an individual self-insurer that is not a member of a workers' compensation pool shall post either:
 1. A minimum \$250,000 guaranty bond and a specific excess reinsurance policy with a self-insured retention of \$250,000 and a policy limit of liability of not less than \$10,000,000.

2. A guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insurer to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insurer for the Commission's approval.

- E. In compliance with this Article and the Workers' Compensation Laws of Arizona, a workers' compensation pool shall post a guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insured pool to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insured pool for the Commission's approval.

Historical Note

Former Rule VI; Amended effective February 27, 1975 (Supp. 75-1). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-206 recodified from R4-13-206 (Supp. 95-1).

R20-5-207. Posting of Securities in Lieu of Guaranty Bond; Registration; Deposit

- A. In lieu of posting a guaranty bond as provided in R20-5-206, the self-insurer may deposit with the Commission for transmittal to the State Treasurer bonds of the United States.
- B. Any securities deposited with the State Treasurer shall be registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws. The securities shall be held by the State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to collect or order collection of the principal as it becomes due, to sell or order the sale of these securities or any part of these securities, and to apply or order the application of the proceeds to the payment of any award rendered against the self-insurer in the event of the default in the payment of its obligations. The interest coupons on such securities shall be remitted by the Commission to the self-insurer upon request as they mature.
- C. The securities deposited in compliance with subsections (A) and (B) shall have a face value at maturity in the amount specified by the Commission.

Historical Note

Former Rule VII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-207 recodified from R4-13-207 (Supp. 95-1).

R20-5-208. Posting Other Securities

If the Commission accepts securities other than those specified in R20-5-207, including letters of credit, these securities shall be registered in the same manner as provided in R20-5-207.

Historical Note

Former Rule VIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-208 recodified from R4-13-208 (Supp. 95-1).

R20-5-209. Authorization Limitation

If the Resolution of Authorization to Self-insure is validated by a deposit of acceptable securities, or by a guaranty bond, the resolution shall remain in full force and effect for a period of one year unless revoked by the Commission.

Historical Note

Former Rule IX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-209 recodified

from R4-13-209 (Supp. 95-1).

R20-5-210. Continuation of Authorization

If timely and sufficient application for renewal is made pursuant to R20-5-203, the existing authorization to self-insure shall continue, subject to compliance with A.R.S. Title 23, Chapter 6 and this Article, until the renewal application has been finally determined by the Commission.

Historical Note

Former Rule X. R20-5-210 recodified from R4-13-210 (Supp. 95-1).

R20-5-211. Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership

A. The Commission may revoke a resolution of authorization to self-insure for good cause. Good cause includes:

1. The impairment of the solvency of the self-insurer.
2. The failure of the self-insurer to respond within 10 days of a demand by the Commission to substitute a satisfactory guaranty bond or securities when in the Commission's judgment the bond or securities on deposit are unsatisfactory or insufficient in amount or character.
3. The failure of the self-insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065.
4. The failure of the self-insurer to promptly provide the Commission within 60 days the reports required by the Commission under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction.
5. The failure to comply with state workers' compensation laws.
6. The failure of the self-insurer to pay or comply with any award of the Commission within 30 days after the award becomes final.
7. The willful misstating of any material fact in a payroll report, injury report, or other report or statement made to the Commission.
8. The deliberate refusal of the self-insurer to comply with Commission rules.
9. The failure of the workers' compensation pool to notify the Commission within 30 days before termination or cancellation that a member has been terminated or cancelled.
10. The failure of the workers' compensation pool to notify the Commission within 30 days of receipt of notification that, as a result of the annual audit or examination by the Director of the Department of Insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations and the resulting notification by the Director of the Department of Insurance to the administrator and board of trustees of the workers' compensation pool of the insufficiency and the Director's list of recommendations to abate the deficiency.
11. The failure of the pool to comply with the recommendation of the Director of the Department of Insurance within 60 days of the date of notice as prescribed in A.R.S. §§ 11-952.01(L) and 41-621.01(J).

B. The self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.

C. The self-insurer shall notify the Commission within 24 hours of any change in the ownership status of the employer.

Historical Note

Former Rule XI. Section repealed, new Section adopted

effective July 6, 1993 (Supp. 93-3). R20-5-211 recodified from R4-13-211 (Supp. 95-1).

R20-5-212. Notice of Revocation of Resolution of Authorization to Self-insure

The registration and deposit in the United States mail of a Notice of Revocation of the Resolution of Authorization to Self-insure, addressed to the last known address of the employer as shown by the records of the Commission, and signed by the Commission, shall be deemed to constitute actual delivery of such notice to a self-insurer.

Historical Note

Former Rule XII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-212 recodified from R4-13-212 (Supp. 95-1).

R20-5-213. Substitution of Bond or Securities

No bond or other security deposited as a condition precedent to validating a Resolution of Authorization to Self-insure shall be returned nor shall any substitution be allowed, except upon written order of the Commission. No return of such bond or other security shall be authorized except upon proof that the employer has placed with the Commission an amount or amounts as determined by the Commission to be sufficient to provide for the present value of all death benefits, awards, and determinations previously made by the Commission or the self-insurer, with an adequate contingency amount to apply to reopened claims that have been closed and become final during the period of self-insurance.

Historical Note

Former Rule XIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-213 recodified from R4-13-213 (Supp. 95-1).

R20-5-214. Rating Plans Available for Self-insurers

A. Any of the following rating plans are available to self-insured employers for the purpose of calculating the taxes required by A.R.S. §§ 23-961(G) and 23-1065(A).

1. Fixed Premium Plan
2. Ex-medical Plan
3. Guaranteed Cost Plan
4. Retrospective Rating Plan

B. The provisions of the rating plans apply only to operations and payroll in Arizona, and all such operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all such operations.

Historical Note

Former Rule XIV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-214 recodified from R4-13-214 (Supp. 95-1).

R20-5-215. Fixed Premium Plan: Definition; Formula; Eligibility

A. A Fixed Premium Plan means a plan in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

B. The formula for calculation of the fixed premium plan is as follows: Payroll x Applicable Rate Less Premium Discount.

C. Fixed Premium Plan shall be the exclusive plan available to:

1. Those self-insurers electing this plan.
2. Those self-insurers whose annual net taxable premium does not exceed \$100,000 annually.
3. Those self-insurers not eligible for any other plan authorized by the Commission for rating purposes.

Historical Note

Former Rule XV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-215 recodified

from R4-13-215 (Supp. 95-1).

R20-5-216. Ex-medical Plan: Definition; Formula; Eligibility; Modification

- A. An Ex-Medical Plan means a plan for premium calculation which provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to all of the self-insurer's employees for their benefit and that has complied with the requirements specified in A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in such plan.
- B. The formula for calculation of the Ex-Medical Plan is as follows: $[(\text{Payroll} \times \text{Applicable Rate}) \times (1 - \text{Ex-Medical Factor})]$ less Premium Discount.
- C. Only those self-insurers whose program for medical, surgical, or hospital services has been authorized by the Commission are eligible to utilize this plan, for premium calculation.
- D. To be eligible for this plan the self-insurer's annual net taxable premium must exceed \$100,000.

Historical Note

Former Rule XVI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-216 recodified from R4-13-216 (Supp. 95-1).

R20-5-217. Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation

- A. A Guaranteed Cost Plan means a plan providing for the direct relationship, on an annual basis, of the premium for tax purposes and the experience modification developed to reflect the loss payment and incurred loss experience of the self-insured employer. Loss data for three complete years must be provided to calculate the experience modification factor. This plan shall be calculated annually and the premium shall not be subject to further adjustment during the subsequent year.
- B. The formula for the calculation of the Guaranteed Cost Plan is as follows: $\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor}$ Less Premium Discount.
- C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the Guaranteed Cost Plan:
 1. The submission of data concerning paid loss determinations and incurred loss reserves for each workers' compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Three years of loss data shall be formulated to calculate the experience modification factor.
 2. An annual net taxable premium exceeding \$100,000.

Historical Note

Former Rule XVII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-217 recodified from R4-13-217 (Supp. 95-1).

R20-5-218. Retrospective Rating Plan: Definition; Formula; Eligibility

- A. Retrospective rating plan means a plan providing for the relationship between the premium for tax purposes, the experience modification factor developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year. This plan is to be calculated annually and the premiums shall not be subject to further adjustment during the tax year.
- B. The formula for calculating the retrospective rating plan is as follows: $[\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor} \times \text{Basic Premium Factor} + (\text{losses current year} + \text{adjusted losses previous year}) \times \text{loss conversion factor}] \times \text{Tax Multiplier} = \text{Net Taxable Premium (NTP)}$. The NTP is subject to a maximum and minimum premium level depending on which one of the four rating option plans specified in the rating

systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4 is used.

- C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the retrospective rating plan:
 1. The submission of data concerning paid loss determinations and incurred loss reserved for each worker's compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Four years of loss data must be formulated. The oldest three years of data is used to calculate the rate and the most current year's data is used in the actual tax calculation.
 2. An annual net taxable premium exceeding \$100,000.

Historical Note

Former Rule XVIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-218 recodified from R4-13-218 (Supp. 95-1).

R20-5-219. Payment of Taxes by Self-insurers

The tax payments described in A.R.S. §§ 23-961(G) through (J) and 23-1065(A) shall be processed in accordance with the following:

1. All self-insurers shall submit their payroll, loss, medical, and other information to the Commission by January 31 of each year.
2. All self-insurers shall pay their annual taxes on or before March 31 based on premiums calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.
3. Those self-insurers who paid \$2,000.00 or more for the administrative fund tax (A.R.S. § 23-961(G)) for the preceding calendar year shall pay a quarterly tax in the following year. One of two methods can be used to calculate the payment. The first method is a quarterly payment of 25% of the tax calculated for the previous year. The second method is based on actual payroll and premiums calculated for each quarter. Those self-insured employers who paid \$2,000.00 or more for the Special Fund tax (A.R.S. § 23-1065(A)) for the preceding calendar year must pay a quarterly tax using the same methods to calculate payment. The quarterly payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
4. Upon calculation of the annual taxes, it shall be determined by the Commission if the self-insured employer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the amount representing the difference is due on or before March 31. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, a refund will be paid to the self-insurer.
5. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

Historical Note

Former Rule XIX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-219 recodified from R4-13-219 (Supp. 95-1).

R20-5-220. Basis; Definitions

For determining the premium for purposes of R20-5-214, the Commission shall utilize as the basis for classifications, rating proce-

dures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4.

Historical Note

Former Rule XX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-220 recodified from R4-13-220 (Supp. 95-1).

R20-5-221. Book and Record Review by the Commission

All reports, books, and records of the self-insurer relating to classifications, payroll, incurred loss reserves, and procedures for development of statistical information for the development of rating information are subject to review by the Commission and its authorized representatives. If, in the judgment of the Commission, reports, records, and data relating to payroll or claims are not valid or credible, the Commission reserves the right to require correction of procedure and data to better determine the information needed to evaluate the rating programs.

Historical Note

Former Rule XXI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-221 recodified from R4-13-221 (Supp. 95-1).

R20-5-222. Audits; Cost of Audit

The Commission may, at any time upon three working days' notice, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit will be borne by the self-insurer.

Historical Note

Former Rule XXII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-222 recodified from R4-13-222 (Supp. 95-1).

R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure

A. Administrative completeness review.

1. Initial application.
 - a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform an applicant by written notice whether the application is complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.
 - c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Renewal application.
 - a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform a self-insurer by written notice whether the application is

complete within the time-frame provided in subsection (A)(2)(a). If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.

- c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

B. Substantive review.

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

- D. If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45-day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

Historical Note

Former Rule XXIII. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-223 recodified from R4-13-223 (Supp. 95-1). New Section adopted October 9, 1998 (Supp. 98-4).

R20-5-224. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Former Rule XXIV. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-224 recodified from R4-13-

224 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4).

ARTICLE 3. PRIVATE EMPLOYMENT AGENTS

R20-5-301. Definitions

In addition to the definitions provided in A.R.S. § 23-521, the following definitions apply to this Article:

“Advertising” means any material, means, or medium used by a licensed employment agent for solicitation or promotion of business. This includes business cards, notices, or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It also includes referral cards, invoices, letterheads, or other forms if the forms are used in combination with solicitation or promotion of business.

“Applicant” means any individual, including a talent or model, seeking the services of a licensed employment agent.

“Applicant-paid fee” means a sum of money or value that is collected from an applicant for receiving employment services from a licensed employment agent.

“Bona fide job order” means an employer’s or company’s written or oral authorization to a licensed employment agent to refer an applicant to the employer.

“Business manager” means a person, firm, corporation, or association whose services to a talent or model are limited to giving financial advice or managing the business affairs of the talent or model.

“Candidate” means a person, firm, corporation, or association, applying for an employment agent license.

“Career counseling service” means a person, firm, corporation, or association that provides career assistance, career management, job search assistance, evaluation or planning, information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment, but does not include the following:

- A provider of job referral services;

- A provider of vocational rehabilitation as defined in A.R.S. § 23-501;

- A person, firm, corporation, or association that prepares resumes and documents in support of resumes without providing career counseling or referral services;

- A public or private educational institution;

- A psychologist licensed or certified in this state who provides career guidance and counseling to patients as part of the psychologist’s practice;

- A person engaged in the practice of social work, counseling, or marital and family therapy as those terms are defined in A.R.S. § 32-3251, who provides career guidance and counseling as part of the social work, counseling, marital or family therapy;

- A physician licensed in this state who provides career guidance and counseling to patients as part of the physician’s practice;

- A priest, minister, rabbi or other clergy who provides career guidance and counseling as part of the clergy’s practice; and

- An attorney licensed in this state who provides career guidance and counseling as part of the attorney’s practice.

“Career counselor” means an individual working in a career counseling service to provide career assistance, career management, job search assistance, career evaluation or planning, or information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment. An employee of a career counseling service whose duties are primarily clerical in nature is not a career counselor.

“Commission” means the Industrial Commission of Arizona.

“Company” means a business that obtains applicants from a licensed talent and/or modeling agency.

“Complaint” means an oral or written communication made to the Department or to the Commission by any person alleging improper conduct by a licensed employment agent.

“Council” means the Arizona Employment Advisory Council.

“Department” means the Labor Department of the Industrial Commission of Arizona.

“Director” means the Director of the Industrial Commission of Arizona.

“Electronic media service” means a business that lists applications, resumes, or job openings on a computerized network or system.

“Engagement” means the employment of an individual as an actor, entertainer, model, or performer in an entertainment enterprise.

“Entertainment enterprise” means theater, motion pictures, radio, television, opera, ballet, modeling, circus, vaudeville or variety act, or other performance- or exhibition-oriented business.

“License” means a document issued by the Commission that authorizes a person to conduct business as an employment agent.

“Labor contractor” means an employer as defined under A.R.S. Title 23, Chapter 6, who leases or provides temporary workers to a customer or client.

“Licensed employment agent” or “licensee” means an employment agent defined in A.R.S. § 23-521(A) who holds a valid license issued by the Commission under A.R.S. § 23-521 et seq.

“Managing agent” means a person, firm, corporation, or association that is designated by a licensed employment agent to be in charge of the operation of an employment agency or any of its branches or divisions.

“Model” means an individual who is employed to display, by wearing, clothes or other merchandise.

“Personal manager” means a person, firm, corporation, or association whose services are limited to counseling or advising a talent or model in connection with the talent’s or model’s professional career.

“Placement counselor” means an individual working in a placement counseling service to assist an applicant to obtain employment by providing career counseling services, referral services, or registry services. An employee of a licensed employment agent whose duties are primarily clerical in nature is not a placement counselor.

“Placement counseling service” means a person, firm, corporation, or association that provides career counseling services, referral services, or registry services.

“Referral service” means a person, firm, corporation, or association that refers an applicant to employment upon receipt of a bona fide job order.

“Secretary” means the Director of the Industrial Commission of Arizona Labor Department who serves as the Secretary for the Employment Advisory Council.

“Talent” means an individual rendering performing services in an entertainment enterprise, including musicians.

“Talent or modeling agency or agent” means a person, firm, corporation, or association that provides employment information to a talent or model for the purpose of securing an engagement for the talent or model.

Historical Note

Former Rule I. R20-5-301 recodified from R4-13-301 (Supp. 95-1). Section R20-5-301 repealed; new Section R20-5-301 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-302. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Former Rule II; Amended effective March 9, 1981 (Supp. 81-2). R20-5-302 recodified from R4-13-302 (Supp. 95-1). Section R20-5-302 repealed; new Section R20-5-302 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-303. Forms Prescribed by the Commission

The Commission shall make the following forms, which contain the information listed, available upon request.

1. Initial application for employment agent license:
 - a. Name of candidate, including other names used by the candidate;
 - b. Personal identifying information of candidate;
 - c. Residence, length of residence, and place of prior residency of candidate;
 - d. Employment history of candidate, including work history and experience as an employment agent;
 - e. Personal references of candidate;
 - f. Felony and misdemeanor convictions of candidate;
 - g. Name, trade name, divisions and all other names under which candidate intends to do business;
 - h. Proposed location of all business sites;
 - i. Organizational structure of business;
 - j. Names and addresses of all persons or firms having a financial interest in the business and the percentage of financial interest of each person's or firm's share;
 - k. Job classifications of proposed clientele;
 - l. Fee rates and schedules of business;

- m. Names and addresses of all persons who will be involved in the management and supervision of the business at all locations of the business;
 - n. Information relating to Workers' Compensation Insurance; and
 - o. Request for education records; and
 - p. Request for military discharge records.
2. Business financial statement:
 - a. Name of candidate;
 - b. Business address of candidate; and
 - c. Disclosure of financial information of candidate that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
3. Personal financial statement:
 - a. Name of candidate or managing agent;
 - b. Home address of candidate or managing agent; and
 - c. Disclosure of personal financial information of candidate or managing agent that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
4. Supplemental application:
 - a. Name and telephone number of managing agent, including other names used by the managing agent;
 - b. Name of private employment agent with whom the managing agent intends to associate;
 - c. Personal identifying information of managing agent;
 - d. Residence, length of residence, and place of prior residency of managing agent;
 - e. Employment history of managing agent, including work history and experience as an employment agent;
 - f. Personal references of managing agent;
 - g. Felony and misdemeanor convictions of managing agent; and
 - h. Request for education records; and
 - i. Request for military discharge records.
5. Renewal application for employment agent license:
 - a. Name, address, and telephone number of licensee seeking renewal;
 - b. Position of licensee with employment agent business;
 - c. Name, trade name, including abbreviations of name or trade name, of licensee seeking renewal;
 - d. Current legal business status of licensee seeking renewal;
 - e. Name of managing agent;
 - f. Type of business to be renewed;
 - g. Address of all business sites of licensee;
 - h. Name of all divisions operated by licensee;
 - i. Names and addresses of other businesses operated by licensee;
 - j. Number of placement counselors employed by licensee during preceding year;
 - k. Schedule of fees and rules implemented by licensee and any changes in the schedule of fees and rules during the preceding year;
 - l. List of changes made to forms required by A.R.S. § 23-521 et seq. and this Article in the preceding year;
 - m. Information pertaining to complaints received in the preceding year by the licensee; and
 - n. Information pertaining to compliance with the Arizona workers' compensation laws.

Historical Note

Former Rule III; Amended effective March 9, 1981

(Supp. 81-2). R20-5-303 recodified from R4-13-303 (Supp. 95-1). Section R20-5-303 repealed; new Section R20-5-303 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-304. Time-frames for Processing Initial and Renewal Applications for Employment Agent License by Commission

A. Administrative completeness review.

1. The Department shall review an initial or renewal application for employment agent license within 15 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-521 et seq. and this Article. The Department shall inform the candidate or licensee by written notice whether the application is deemed complete or deficient within the time-frame provided in this subsection. The Department shall deem the application withdrawn if the candidate or licensee fails to file a complete application within 45 days of being notified by the Department that the application is incomplete or deficient. A candidate or licensee can request an extension of time to file a complete application by filing a written request with the Department before the Department deems the application withdrawn. For good cause shown, the Department may grant an extension of time by serving written notice of the extension upon the candidate or licensee.

B. Substantive review.

1. Initial applications. Within 120 days after an initial application is deemed complete, the Commission shall determine whether the initial application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order granting or denying the license.
2. Renewal applications. Within 60 days after a renewal application is deemed complete, the Commission shall determine whether the renewal application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order refusing to renew the license or grant the renewal by issuing a new license.

C. Overall Review.

1. Initial application. Within 135 days after receipt of an initial application for an employment agent license, the Commission shall issue an order denying or granting the initial license.
2. Renewal application. Within 75 days after receipt of a renewal application for an employment agent license, the Commission shall issue an order refusing to renew the license or grant the renewal by issuing a new license.

Historical Note

Former Rule IV; Amended effective March 9, 1981 (Supp. 81-2). R20-5-304 recodified from R4-13-304 (Supp. 95-1). Section R20-5-304 repealed; new Section R20-5-304 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-305. Filing Requirements for Initial Application for Employment Agent License

A. Initial application for employment agent license.

1. A candidate shall complete an initial application on forms approved by the Commission.
2. A candidate shall file an application for an employment agent license with the Department. An application is considered filed when it is received at the office of the Department and stamped by the Department with the date of filing.

3. An application shall be typewritten or written in legible text.
4. The individual completing the application shall sign and date the application and have the signature notarized.
5. The individual completing and signing the application shall verify that the information contained in and submitted with the application is true and correct.

B. If a candidate intends to do business as a sole proprietorship, then the candidate shall include the following information with the application for an initial employment agent license:

1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A personal financial statement completed by the candidate;
3. A business financial statement completed by the candidate;
4. Education records of the candidate and all managing agents;
5. Military discharge records of the candidate and all managing agents;
6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
7. A copy of the registration of the trade name through the Arizona Secretary of State;
8. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
9. A copy of the franchise agreement, if the proposed business is a franchise; and
10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business.

C. If a candidate intends to do business as a partnership, the candidate shall include the following information with the application for an initial employment agent license:

1. A supplemental application completed by all partners and managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A personal financial statement for each partner and prepared by each partner;
3. A business financial statement completed by all partners;
4. Education records of all partners and all managing agents;
5. Military discharge records of all partners and all managing agents;
6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
7. A copy of the registration of the trade name through the Arizona Secretary of State;
8. A copy of the partnership agreement;
9. A copy of the franchise agreement, if the proposed business is a franchise;
10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business;
11. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;

D. If the candidate intends to do business as a corporation, an officer of the corporation shall complete and sign the initial

application for employment agent license and shall include the following information in the candidate's application:

1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
 2. A business financial statement of the corporation;
 3. Education records of all managing agents and the officer completing the application for employment agent license;
 4. Military discharge records of all managing agents and the officer completing the application;
 5. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
 6. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
 7. Certified resolution of the corporation authorizing the application for an employment agent license and naming the individuals authorized to act on behalf of the corporation;
 8. A copy of the candidate's articles of incorporation on file with the Arizona Corporation Commission;
 9. A copy of the franchise agreement, if the proposed business is a franchise;
 10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business; and
 11. A copy of the registration of the trade name through the Arizona Secretary of State.
- E. A candidate shall include with an application for initial employment agent license a schedule of fees and charges as described in A.R.S. § 23-530(A).
- F. A candidate shall include with an application for initial employment agent license a copy of all rules and regulations as described in A.R.S. § 23-530(A).
- G. A candidate shall include with an application for initial employment agent license sample forms of the following documents:
1. Receipts;
 2. Contracts;
 3. Job order forms; and
 4. Other documents that relate in any manner to the fee that is charged an applicant.

Historical Note

Former Rule V; Former Section R4-13-305 renumbered and amended as Section R4-13-306, new Section R20-5-305 adopted effective March 9, 1981 (Supp. 81-2). R20-5-305 recodified from R4-13-305 (Supp. 95-1). Section R20-5-305 repealed; new Section R20-5-305 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-306. Written Examination

- A. Except as otherwise provided in this Article, all individuals required by A.R.S. § 23-526 and this Article to take the written examination described in A.R.S. § 23-526(B), shall complete the examination within 12 months before filing an initial application for employment agent license with the Department. The Commission shall not grant an employment agent license unless all individuals required by A.R.S. § 23-526 and this Article to take the written examination have answered correctly 80% of the questions asked in the examination.
- B. The Department shall give notice of the time and place of the written examination upon request.
- C. Examination results are valid for a period of 12 months. If after 12 months, the individual taking the examination does

not use the results in support of an application for an employment agent license, then that individual shall be required to retake the examination.

Historical Note

Former Rule VI. Former Section R4-13-306 renumbered and amended as Section R4-13-307, former Section R4-13-305 renumbered and amended as Section R4-13-306 effective March 9, 1981 (Supp. 81-2). R20-5-306 recodified from R4-13-306 (Supp. 95-1). Section R20-5-306 repealed; new Section R20-5-306 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-307. Renewal of Employment Agent License

- A. A licensee can apply for renewal of an employment agent license under A.R.S. § 23-528 by filing a completed renewal application with the Department before the date of the expiration of the license. In addition to the information described in R20-5-303(5), a licensee shall include the renewal license fee in A.R.S. § 23-528(B).
- B. The Commission shall deem an employment agent license expired if a renewal application is not filed with the Department before the expiration date of the employment agent license. If an employment agent license expires, the formerly licensed agent shall file a new application which meets the requirements of this Article for an initial application.
- C. If a timely and complete renewal application is filed with the Department under this Article, the Commission shall consider the existing employment agent license valid, subject to compliance with A.R.S. § 23-531 et seq. and this Article, until a new license is issued or an order of the Commission refusing to renew becomes final.

Historical Note

Former Rule VII. Former Section R4-13-307 renumbered as Section R4-13-309, former Section R4-13-306 renumbered and amended as Section R4-13-307 effective March 9, 1981 (Supp. 81-2). R20-5-307 recodified from R4-13-307 (Supp. 95-1). Section R20-5-307 repealed; new Section R20-5-307 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-308. Substantive Review of Initial or Renewal Application for Employment Agent License

- A. When a completed initial or renewal application for employment agent license is filed, the Department shall investigate the candidate or licensee to verify whether the information contained in and submitted with the initial or renewal application for employment agent license is accurate and complies with the requirements of A.R.S. § 23-521 et seq. and this Article. The Department shall also conduct an investigation of the candidate or licensee, in accordance with A.R.S. § 23-523(3) and § 23-524, to determine whether the candidate or licensee has a history or record of any of the following:
1. Dishonesty;
 2. Financial instability or irregularity, including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 3. Incompetence;
 4. Gross negligence;
 5. Bribery;
 6. Willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
 7. Source of injury or loss to the public; or
 8. Lack of education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.

- B. The Department shall verify that all individuals who are required by this Article to take the written examination required by A.R.S. § 23-526(B) have received a passing score of 80%.
 - C. The Department shall present the findings of its investigation described in subsections (A) and (B) to the Council. The Council shall make its recommendation regarding an initial or renewal application for employment agent license based on the information submitted by the candidate or licensee and the investigation of the Department. Under the authority of A.R.S. § 23-522.02, the Council shall recommend that an application for an initial or renewal license be denied if the Council finds one or more of the following conditions:
 - 1. Material misrepresentation or fraud in the initial or renewal application;
 - 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 - 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
 - 4. The candidate, licensee, or managing agent has a history or record of incompetence;
 - 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 - 6. The candidate, licensee, or managing agent has a history or record of bribery;
 - 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
 - 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 - 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
 - D. The Department shall present the recommendation of the Council pertaining to an initial application to the Commission. The Department shall also present to the Commission the recommendation of the Council that denies a renewal application. If the Council recommends that a renewal application be granted, the Department is not required to present the recommendation to the Commission. In that event, the Department shall notify the licensee of the approval by sending the licensee a renewed license.
- B. Under the authority in A.R.S. §§ 23-523 and 23-524, the Commission shall deny an application for an initial or renewal license if the Commission finds one or more of the following conditions:
 - 1. Material misrepresentation or fraud in the initial or renewal application;
 - 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 - 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
 - 4. The candidate, licensee, or managing agent has a history or record of incompetence;
 - 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 - 6. The candidate, licensee, or managing agent has a history or record of bribery;
 - 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
 - 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 - 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
 - C. The Commission shall issue written findings and an order granting or denying an employment agent license.
 - D. If the Commission denies an employment agent license, the Department shall serve a copy of the Commission's written findings and order upon the candidate or licensee within five days of the date the Commission issues its findings and order.
 - E. If the Commission grants a renewal application for employment agent license, then the Department shall provide the licensee with a renewed license within five days of the date the Commission issues its written findings and order.
 - F. If the Commission grants an initial application for employment agent license, the Department shall provide the candidate with written notification of that approval. The written notification shall include a statement that the license approved by the Commission will be issued upon receipt of the annual fee required under A.R.S. § 23-528 and that the approval will expire within 45 days unless the fee is paid.

Historical Note

Former Rule VIII. Former Section R4-13-308 renumbered as Section R4-13-310, new Section R4-13-308 adopted effective March 9, 1981 (Supp. 81-2). R20-5-308 recodified from R4-13-308 (Supp. 95-1). Section R20-5-308 repealed; new Section R20-5-308 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-309. Decision by the Commission on an Initial or Renewal Application for Employment Agent License

- A. In addition to the requirements imposed by A.R.S. § 23-521 et seq., the Commission shall consider the following before granting or denying an initial or renewal employment agent license:
 - 1. The information submitted by the candidate or licensee,
 - 2. The findings of the investigation by the Department, and
 - 3. The recommendation of the Council.

Historical Note

Former Rule IX. Former Section R4-13-309 repealed, former Section R4-13-307 renumbered as Section R4-13-309 effective March 9, 1981 (Supp. 81-2). R20-5-309 recodified from R4-13-309 (Supp. 95-1). Section R20-5-309 repealed; new Section R20-5-309 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-310. Payment of Initial License Fee under A.R.S. § 23-528

- A. The Commission shall not issue an initial employment agent license granted under this Article until the candidate pays the license fee required under A.R.S. § 23-528.
- B. A candidate shall pay the license fee required under A.R.S. § 23-528 within 45 days of the date the Commission grants the initial application for employment agent license.
- C. If a candidate fails to pay the license fee required under A.R.S. § 23-528 within the time provided in this Section, the Commission shall deem the order approving an initial application

for employment agent license expired. In that event, the Commission shall require the candidate to file a new application if the candidate still seeks licensing as an employment agent.

Historical Note

Former Rule X. Former Section R4-13-310 renumbered and amended as Section R4-13-312, former Section R4-13-308 renumbered as Section R4-13-310 effective March 9, 1981 (Supp. 81-2). R20-5-310 recodified from R4-13-310 (Supp. 95-1). Section R20-5-310 repealed; new Section R20-5-310 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-311. Right to Request a Hearing

- A. A candidate or licensee shall have 30 days from the date the Commission findings and order is served under R20-5-309 to request a hearing.
- B. A request for hearing shall be in writing and signed by the candidate or licensee or the candidate's or licensee's legal representative. The candidate or licensee shall file the request for hearing with the Department.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Department within the time specified in subsection (A).

Historical Note

Former Rule XI. Former Section R4-13-311 repealed, new Section R4-13-311 adopted effective March 9, 1981 (Supp. 81-2). R20-5-311 recodified from R4-13-311 (Supp. 95-1). Section R20-5-311 repealed; new Section R20-5-311 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-312. Hearing Rights and Procedures

- A. Burden of proof.
 - 1. Except as provided in subsection (A)(2) and R20-5-324, in all proceedings arising out of A.R.S. Title 23, Chapter 3, Article 2, the candidate or licensee shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-521 et seq. and this Article.
 - 2. In revocation and suspension hearings, the Commission shall have the burden of proof to establish that the licensee committed the acts described in A.R.S. § 23-529(A).
- B. Roles of Chair and Chief Counsel.
 - 1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 - 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission. Upon direction of the Chair of the Commission and on behalf of the Commission, the Chief Counsel shall issue all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Department.
- C. Appearance by a party.
 - 1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 - 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.

- 1. For purposes of this Section, a document is deemed filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
- 2. Except as otherwise provided in A.R.S. § 23-521, et seq. and this Article, service of all documents upon the Commission, candidate, licensee or applicant shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.
 - 1. The Commission shall give the parties at least 20 days notice of hearing.
 - 2. A notice of hearing shall be in writing and mailed to the address of the candidate or licensee as shown on the application for employment agent license or upon the candidate's or licensee's representative if a notice of appearance has been filed by the representative. In the case of a fee dispute hearing, a notice of hearing shall be mailed to the address of the applicant as shown on the complaint and the licensee as shown on the answer, if an answer is filed. If no answer is filed, then the notice of hearing shall be sent to the last known mailing address of the licensee as shown on the records of the Commission.
 - 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.
 - 1. The civil rules of evidence do not apply to hearings held under this Section.
 - 2. The parties may make opening and closing statements with the permission of the Commission if the statements will be helpful to a determination of the issues.
 - 3. All witnesses at a hearing shall testify under oath or affirmation.
 - 4. The parties may present evidence and conduct cross-examination of witnesses.
 - 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 - 6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
 - 7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

Historical Note

Former Rule XII. Former Section R4-13-312 renumbered as Section R4-13-314, former Section R4-13-310 renum-

bered and amended as Section R4-13-312 effective March 9, 1981 (Supp. 81-2). R20-5-312 recodified from R4-13-312 (Supp. 95-1). Section R20-5-312 repealed; new Section R20-5-312 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-313. Decision Upon Hearing by Commission

- A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-309(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke or suspend a license shall be based upon the grounds in A.R.S. § 23-529 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. A decision of the Commission under R20-5-322(D) shall be based upon the grounds in R20-5-322(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D. Within 30 days after the Commission renders a decision at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E. A Commission decision is final unless a candidate or licensee requests review under R20-5-314 within 30 days from the date the written decision is issued.

Historical Note

Former Rule XIII. Former Section R4-13-313 renumbered and amended as Section R4-13-318 effective March 9, 1981 (Supp. 81-2). R20-5-313 recodified from R4-13-313 (Supp. 95-1). New Section adopted effective September 9, 1998 (Supp. 98-3).

R20-5-314. Request for Review

- A. A party may request review of a Commission decision issued under R20-5-313 by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
 - 1. Irregularities in the hearing proceedings or any order or abuse of discretion depriving the party seeking review of a fair hearing;
 - 2. Misconduct by the Department, Council, Commission, or any party to the hearing;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 - 5. Excessive or insufficient sanctions or penalties imposed at hearing;
 - 6. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 - 7. Bias or prejudice of the Department, Council, or Commission; or
 - 8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C. A request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.

- E. The Commission's decision upon review is final unless a candidate or licensee seeks judicial review as provided in A.R.S. § 12-901 et seq.

Historical Note

Former Section R4-13-312 renumbered as Section R4-13-314 effective March 9, 1981 (Supp. 81-2). R20-5-314 recodified from R4-13-314 (Supp. 95-1). Section R20-5-314 repealed; new Section R20-5-314 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-315. Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. § 23-529

- A. A complaint described in A.R.S. § 23-529 shall be filed with the Department within 90 days of the date on which the event giving rise to the complaint occurred.
- B. Upon receipt of a complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct including obtaining a response from the licensee that is the subject of the complaint. If, upon completion of its investigation, the Department determines that there is sufficient evidence to warrant a revocation or suspension hearing, the Department shall present its findings to the Commission. If the Commission agrees with the Department that there is sufficient evidence to warrant a revocation or suspension hearing, the Commission shall direct the secretary of the Commission to serve the subject licensee with a verified complaint under A.R.S. § 23-529. In addition to the requirements set forth in A.R.S. § 23-529, the verified complaint shall contain the factual findings of the Department and a statement that the Commission shall consider the failure of the licensee to appear at hearing to be an admission of the factual findings in the verified complaint.
- C. Except as provided in A.R.S. § 23-529, A.A.C. R20-5-312, R20-5-313, and R20-5-314 govern hearing rights and procedures for revocation and suspension hearings.

Historical Note

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-315 recodified from R4-13-315 (Supp. 95-1). Section R20-5-315 repealed; new Section R20-5-315 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-316. Reissuance of Employment Agent License After Suspension under A.R.S. § 23-529(D)

- A. An employment agent, whose license has been suspended, may file a request with the Commission after the Commission's decision suspending the license is deemed final asking that the license be reissued. The request for reissuance shall be filed with the Department and shall include the following:
 - 1. The grounds and facts supporting the request for reissuance;
 - 2. All action taken by the formerly licensed employment agent to correct, remedy, or address the reason that the Commission suspended the license; and
 - 3. All information required in an initial application, unless unchanged, in which case a verified statement that the information required for an initial employment agent license is true and correct as originally submitted.
- B. The Department shall review the request for reissuance of employment agent license for administrative completeness within 15 days of receipt of the request.
- C. Within 60 days after the expiration of the time-frame described in subsection (B), the Commission shall conduct a hearing to determine whether the previously suspended license should be reissued. The Commission shall reissue the suspended license if it appears by substantial evidence that the licensee has corrected or remedied the reason that the Com-

mission suspended the license and the licensee has not engaged in any acts in violation of A.R.S. Title 23, Chapter 3, Article 2 or this Article during the time that the license was suspended.

- D. R20-5-312, R20-5-313 and R20-5-314 govern hearing rights and procedure for this Section.

Historical Note

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-316 recodified from R4-13-316 (Supp. 95-1). Section R20-5-316 repealed; new Section R20-5-316 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-317. Amendment of Employment Agent License

- A. A licensee shall apply to the Department for an amendment to its employment agent license 30 days before:
1. Changing the name under which the employment agent license is issued; or
 2. Changing the location of the employment agency.
- B. The Department shall review a request for amendment and shall issue an amended license 15 days after receipt of a licensee's current license and the following, if applicable:
1. If the licensee changes the name of the employment agency, the licensee shall submit an amendment or rider of the surety bond showing the new name; or
 2. If the licensee changes the licensee's trade name, the licensee shall submit a copy of the registration of the new trade name with the Arizona Secretary of State and submit an amendment or rider of the surety bond showing the new name.
- C. Transfer or sale of license prohibited.
1. A licensee shall not transfer to another the licensee's employment agent license.
 2. A licensee shall not sell the licensee's employment agent license. A purchaser of a licensee's business shall not operate the applicant-paid fee business until the purchaser is licensed by the Commission under A.R.S. § 23- 521 et seq. and this Article.
- D. Before a licensee changes its legal status or form of doing business, the licensee shall file an initial application for an employment agent license for the new business.
- E. Relinquishment of license.
1. A licensee shall give the Department 30 days written notice before terminating or discontinuing business as an employment agent.
 2. After receipt of a notice of intent to terminate or discontinue, the Department shall conduct an investigation of the licensee's operation to determine whether the operations are in order and in compliance with A.R.S. § 23-521 et seq. and this Article.
 3. If the Department determines that the licensee's operations are in order it shall notify the licensee and the company issuing the surety bond that the Department approves the discontinuance of the licensee's business and cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return the cash deposit. After the Department notifies the licensee of its approval to discontinue business, the licensee shall return its license to the Department for cancellation.
 4. If, after an investigation of the licensee's operation, the Department determines that the licensee's operation is not in order (for example, pending claims, refund claims), the Department shall not approve the cancellation of the surety bond or return of the licensee's cash deposit until the licensee resolves all pending matters to the satisfaction of the Department.
- F. Cancellation of the bond by the surety.
1. The Department shall provide written notice to a licensee within five days of a notice of cancellation of the bond by the surety. A licensee shall submit a new bond or cash deposit to the Department at least 10 days before the existing bond is canceled.
 2. If a licensee fails to provide to the Department a new bond or cash deposit within 10 days before the cancellation of the existing bond, the Department shall advise the licensee in writing that the licensee may not act as an employment agent from the date of the cancellation until the date a new bond or cash deposit is received by the Department.
 3. The repeated failure to maintain a surety bond or cash deposit at all times constitutes gross negligence and cause for disciplinary action under A.R.S. § 23-529.
- G. Disassociation of managing agent.
1. A licensee shall notify the Department within 10 days if any managing agent is disassociated from a licensee.
 2. At the time of disassociation, a licensee shall appoint another managing agent unless an existing managing agent will be managing the employment agency without replacement of the disassociating managing agent.
 3. A newly appointed managing agent shall complete and file a supplemental application within 30 days of appointment.
 4. A newly appointed managing agent shall take and pass the written examination required by A.R.S. § 23-526 and R20-5-306.
 5. The Department shall advise a licensee whether an application filed by a newly appointed managing agent is deemed complete within 10 days from the date the application is filed. The Department shall issue findings and an order approving or disapproving the appointment of the newly appointed managing agent within 45 days of the date that the licensee is notified the application is complete. The Department shall disapprove the appointment of the new managing agent if the Department finds one or more of the following conditions:
 - a. Material misrepresentation or fraud in the newly appointed managing agent's supplemental application;
 - b. The newly appointed managing agent has a history or record of dishonesty;
 - c. The newly appointed managing agent has a history or record of financial instability or irregularity including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 - d. The newly appointed managing agent has a history or record of incompetence;
 - e. The newly appointed managing agent has a history or record of gross negligence;
 - f. The newly appointed managing agent has a history or record of bribery;
 - g. The newly appointed managing agent has a history or record of willful disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
 - h. The newly appointed managing agent has a history or record of injury or loss to the public; or
 - i. The newly appointed managing agent lacks the education, experience, training, or skill to enable the newly appointed managing agent to competently discharge the duties and responsibilities of a managing agent.

6. The Department shall deem its findings and order issued under subsection (G) final unless the licensee requests a hearing before the Commission within 30 days of the date that the findings and order is issued. The request for hearing shall be in writing, signed by the licensee or the licensee's legal representative and filed with the Commission. The Commission shall consider the factors in subsection (G) when approving or disapproving the appointment of a new managing agent. R20-5-312, R20-5-313, and R20-5-314 shall govern hearing rights and procedure for a request for hearing filed under this subsection.

Historical Note

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-317 recodified from R4-13-317 (Supp. 95-1). Section R20-5-317 repealed; new Section R20-5-317 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-318. Form of Books, Registers and Records

- A. A licensee shall keep true and correct records of all the business transactions related to the business of an employment agency, including records documenting all bona fide job orders or referrals and copies of all advertisements of the licensee. The licensee shall ensure that all records are legible, understandable and maintained in the office of the licensee for at least three years.
- B. In addition to the requirements of subsection (A), a licensee shall maintain a summary record of the licensee's job orders and referrals for the prior three years which is recorded on a form containing the following:
 1. Name of the individual communicating the job order;
 2. Name of the individual communicating the job referral;
 3. Date of the job order and the job referral;
 4. Name of the individual recording the job order and job referral;
 5. Name and address of employer or company placing the job order;
 6. Name of individual to whom the applicant is to report for an interview;
 7. Job title and basic requirements of the job contained in job order and referral; and
 8. Name of applicant referred.

Historical Note

Former Section R4-13-313 renumbered and amended as Section R4-13-318 effective March 9, 1981 (Supp. 81-2). R20-5-318 recodified from R4-13-318 (Supp. 95-1). Section R20-5-318 repealed; new Section R20-5-318 adopted effective September 9, 1998 (Supp. 98-3).

R20-5-319. Form and Requirements of Contracts

- A. Contract terms and provisions. A licensee shall ensure that all contracts between a licensee and applicant set forth in clear and unambiguous terms the respective rights and obligations of the applicant and licensee and include the following:
 1. The name and address of the applicant and licensee;
 2. A list of the current schedule of fees and charges described in A.R.S. § 23-530(A) and submitted to the Commission;
 3. A clear statement defining when the applicant becomes obligated for the payment of a fee;
 4. A clear statement describing the circumstances under which the applicant is entitled to an adjustment, waiver, or refund of a fee;
 5. A clear statement describing the services performed by the licensee, including if applicable, the duration of the contract;

6. A statement that the employment agency is licensed, bonded, operates under the laws of Arizona, and is regulated by the Industrial Commission of Arizona;
7. An acknowledgment by the applicant that the applicant has received a copy of the signed contract; and
8. Except for contracts between an applicant and a talent or modeling agent, a statement that employment is considered to be temporary when within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause."
9. The following statement shall be included in all contracts between an applicant and career counseling service in no smaller than 10 point bold face type: 'No verbal or written promise or guarantee of any job or employment is made or implied under the terms of the contract'.
- B. An applicant is deemed to have accepted a position when the applicant agrees with an employer or company to start work at an agreed-upon wage.
- C. Except for contracts between an applicant and a talent or modeling agent, all placements are considered permanent unless the contract expressly states otherwise or within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause."
- D. A licensee shall provide the applicant a copy or duplicate original of all documents signed by either or both the applicant and licensee.
- E. The duration and terms of a contract entered into by a talent or modeling agent and applicant shall not exceed two years. A contract may be renewed or terminated by mutual consent of the parties.
- F. If a term of a contract entered into by a talent or modeling agent, or applicant provides that the applicant's compensation is paid directly to the talent or modeling agent by a company, the talent or modeling agent shall pay the applicant the compensation received, less the talent or modeling agent's fee, no later than seven days after receiving the compensation from the company.
- G. A talent or modeling agent shall not specify in a contract with an applicant a higher rate of commission than that which is on file with the Department.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-320. Bona Fide Job Order

- A. A licensee shall not offer or represent to an applicant a specific position without having a bona fide job order.
- B. A licensee shall not misrepresent any matter in connection with a bona fide job order.
- C. A licensee shall not initiate contact with any applicant at the applicant's current place or places of employment for any reason related to the licensee's employment agency business without the applicant's written permission.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-321. Bona Fide Job Referral

- A. A referral from a licensee, other than a talent or modeling agent, is bona fide when all of the following are completed:
 1. The licensee informs the applicant of the name and location of an employer that has placed a bona fide job order, including the name of the individual to whom the applicant will report for an interview;

2. The licensee informs the applicant of the job specifications and salary range, including the nature, terms, and conditions of the position;
 3. The licensee informs the employer of the applicant's name and qualifications; and
 4. The employer and applicant agree, either directly or by authorized arrangement of the licensee, to meet for an interview.
- B.** A referral from a talent or modeling agent is bona fide when all of the following are completed:
1. The talent or modeling agent informs the applicant of the name and location of a company that has placed a bona fide job order;
 2. The talent or modeling agent informs the applicant of the time and duration of the contracted engagement and the amount to be paid to the applicant for the engagement; and
 3. The talent or modeling agent gives the applicant a description of the entertainment or services to be performed by the applicant, including the nature, terms, and conditions of the position, and if applicable, the number of performances per day or week required of the applicant.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission

- A.** The Department shall not approve a fee schedule or receipt submitted by a candidate or licensee unless the schedule or receipt is in a form that is reasonably understandable by applicants.
- B.** The Department shall consider the following factors in determining the reasonableness of a fee under A.R.S. § 23-530(B):
1. The fee customarily charged in the locality for similar employment services;
 2. The time and labor required of the candidate or licensee;
 3. The skill required to perform the employment services properly; and
 4. The experience, reputation, and ability of the candidate or licensee performing the employment services.
- C.** A licensee may change its schedule of fees by filing an amended schedule of fees with the Department. The licensee shall not use the amended schedule of fees until the schedule has been approved by the Department.
- D.** Except as provided in R20-5-308, the Department shall review a licensee's amended schedule of fees within 30 days from the date of filing and shall issue a written order approving or disapproving the schedule of fees. The Commission shall deem an order approving or disapproving the schedule of fees final unless a licensee requests a hearing within 30 days after the order is issued. R20-5-312, R20-5-313, and R20-5-314 shall govern hearings held under this subsection.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-323. Fees for Services

- A.** Under A.R.S. § 23-530 and subject to subsection (D), a licensee, other than a talent or modeling agent or career counselor, may charge an applicant a fee when any of the following occur:
1. The applicant accepts employment as a result of a bona fide job order;
 2. The applicant accepts employment as a result of a bona fide job order and fails to report for work, except when justifiable circumstances prevent the applicant from

reporting to work. For purposes of this Section 'justifiable circumstances' include death of an applicant or family member, serious physical or psychological illness or condition of an applicant or family member or 'just cause' as defined in R20-5-323(F);

3. The applicant fails to secure or does not accept a position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the first employer refers the applicant within six months as a result of the original referral by the licensee; and
 4. The applicant informs another person of the availability of the position described in the referral by the licensee and that person accepts the position within six months after the date of the referral.
- B.** Under A.R.S. § 23-530 and subject to subsection (D), a talent or modeling agent may charge an applicant a fee when the applicant receives compensation from the company to whom the applicant is sent under a bona fide referral.
- C.** Under A.R.S. § 23-530 and subject to subsection (D), a career counselor may either charge an applicant a fee after the applicant receives services from the career counselor, or require payment in advance of services, if the career counselor provides a prompt refund to the applicant when services are not provided.
- D.** Computation of a fee by a licensee other than a talent or modeling agent or career counselor.
1. A licensee shall not charge a full fee but may charge an adjusted fee to an applicant who starts work but before the expiration of 90 days stops work for the following reasons:
 - a. The applicant or family member dies,
 - b. The applicant or family member suffers a serious physical or psychological illness or condition,
 - c. The applicant is discharged 'without fault', or
 - d. The applicant resigns with 'just cause'.
 2. A licensee shall not charge more than 50% of the scheduled fee to an applicant who fails to report to work without good reason or voluntarily terminates employment without just cause within 30 days of starting employment.
- E.** For purposes of computing a fee, termination "for cause" or "with fault" means a lawful or legal termination "for cause" or "with fault" under the laws of this State which may include termination for the following reasons:
1. Unexcused absence from work;
 2. Intentional violation of employer work rules; or
 3. Incapacitation or inability to perform work duties due to alcohol, drugs, or illegal substances or agents.
- F.** For purposes of computing a fee, an applicant has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and those conditions, if known, would cause the applicant to reasonably refuse employment.
- G.** Refund of a fee.
1. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if following a bona fide job order the applicant is not permitted to, or is unable to start work, as a result of justifiable circumstances as defined in R20-5-323(A)(2).
 2. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if the licensee fails to provide or deliver the services or products agreed upon in the contract between the licensee and applicant.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-324. Fee Disputes**A. Complaint alleging refund dispute.**

1. An applicant alleging that a licensee has failed to refund a fee that the applicant is entitled to receive may file a written notarized complaint with the Department. The written complaint shall be filed within 90 days of demanding a refund from the licensee. The applicant shall make the written complaint under oath and include the following information:
 - a. The name and address of the applicant;
 - b. The name and address of the licensee against whom the complaint is filed;
 - c. The factual allegations of the applicant along with any supporting documentation;
 - d. The relief requested by the applicant; and
 - e. All steps taken to informally resolve the dispute between the applicant and licensee.
2. The Department shall serve the licensee a copy of the complaint by certified mail within five days of receipt of the complaint.

B. Answer.

1. A licensee shall respond to a complaint filed against it by filing an answer with the Department within 10 days after the complaint is mailed.
2. The licensee shall attach to the licensee's answer copies of all receipts, agreements, or contracts relevant to the dispute.
3. The Department shall mail the applicant a copy of the licensee's answer within 10 days of receipt of the answer.

C. Investigation and determination by Department.

1. The Department shall investigate the allegations contained in a complaint and answer to determine whether a fee charged by the licensee complies with A.R.S. § 23-521 et seq. and this Article. At the request of the parties or on its own motion, the Department may schedule an informal meeting between the applicant, licensee and Director of the Department. The Department shall convene the informal meeting for the purpose of obtaining information to assist the Department in its investigation of the refund dispute.
2. Within 90 days after receipt of the answer, or the complaint if no answer is filed, the Department shall issue written findings and an order setting forth its determination of the refund dispute.
3. The Department shall mail a copy of its findings and order upon the applicant and licensee by mail at the last known address of the applicant and licensee.
4. The Department shall deem its findings and order final unless within 30 days from the date the findings and order is mailed, the applicant or licensee, or an authorized representative of the applicant or licensee, requests a hearing before the Commission.

D. Commission Hearing and Decision.

1. Hearing rights and procedures shall be governed by R20-5-312.
2. An applicant shall have the burden to establish that the applicant is entitled to a refund.
3. Based on the evidence presented at hearing, the Commission shall determine whether the fee charged by the licensee complies with the requirements of A.R.S. § 23-521 et seq. and this Article entitling the applicant to a refund of the fee. The Commission shall issue written findings and an order setting forth its determination. The Commission decision is final unless a party requests review within 30 days from the date the decision is issued.

4. A party may request review of a Commission decision issued under this subsection by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties. The request for review shall be based upon one or more of the grounds set forth in R20-5-314 (B) that have materially affected the rights of a party. The request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
5. The Commission shall deem its decision upon review final unless an applicant or licensee seeks review as required by A.R.S. § 23-532(C).

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-325. Determining Right of Referral and Placement

As between two licensees, the licensee entitled to a fee is the licensee that first completes a bona fide referral. However, if after the expiration of six months from the date of a referral by a licensee to an employer, no active interest or consideration is being given the applicant by the employer through the original referral, and a second licensee, who has a bona fide job order from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the second referral, the second licensee is entitled to the fee.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-326. Advertising

In addition to the provisions of A.R.S. § 23-534, the Department shall deem advertising false, misleading, or misrepresentative if the advertisement fails to conform to the following requirements:

1. An advertisement shall carry the name under which the agency is licensed to do business and shall state that the business is an applicant-paid service or includes an applicant-paid service. An agent may abbreviate in an advertisement "applicant-paid service" as "app-pd svc." An agent may abbreviate in an advertisement the name under which the agency is licensed to do business provided that an agent does not abbreviate its licensed name by using initials only unless initials are a part of the name under which the agent is licensed;
2. If an advertisement is for a specific position, it shall be based upon an actual bona fide job order with the licensee and available at the time the advertisement is printed;
3. An advertisement shall not use a post office box number, a press box number, an associate name, an employer or counselor name, a telephone number only, or any other "blind" address;
4. An advertisement shall be canceled when a position is known to be filled or when knowledge is available that the position is not available;
5. A position shall not be advertised at maximum pay only. A position may be advertised at a range from minimum to maximum, or by the words "to a maximum or \$" or "to \$." The word "open" or the symbol "\$\$\$" may not be used as a substitute for the salary of any position or positions in an advertisement;
6. An advertised position that requires or may require travel 50 miles beyond the city in which the newspaper or medium is published shall state that the position is not local;
7. A job title shall appear in an advertisement and shall be reasonably descriptive in accordance with the type of work to be performed;

8. An advertisement for a position within the agency itself shall indicate the agency is the employer;
9. An advertisement shall not state "guarantees a job," "guaranteed results," or words of similar import;
10. If the advertisement is a display or promotional advertisement and does not list a particular position, it shall carry the licensed name of the licensed employment agency;
11. An advertisement shall not state or imply that the licensed employment agency has access to an "unpublished job market" or "hidden job market"; and
12. An advertisement for a career counseling service shall not state or imply the following:
 - a. The existence of specific or general job openings;
 - b. Special contacts;
 - c. The success performance of clients in percentage terms;
 - d. Prospective increase in income as a result of utilizing the career counseling service;
 - e. The number of interviews or job offers likely to be obtained as a result of utilizing the career counseling service; and
 - f. The time within which it is likely that a new position will be found.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-327. Labor Contractors

A labor contractor is not considered a private employment agent provided the labor contractor does not charge a fee to the worker who is contracted to the labor contractor's customer or client and meets the definition of a labor contractor under this Article.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-328. Talent and Modeling Agencies

- A. All talent or modeling agencies meeting the definition of an employment agent in A.R.S. § 23-521(A) are subject to the provisions of A.R.S. § 23-521 et seq. and this Article, except that the Department shall not consider the following activities as conducting the business of a talent agent in this state if no fees are charged to applicants for:
 1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
 2. Acting as exclusive business or personal manager for a talent and not referring talent and models to jobs; or
 3. Casting services.
- B. A talent or modeling agency shall investigate any company who offers employment to a talent or model to reasonably ensure that the company has not defaulted in the payment of salaries, fees, or other compensation to talents and models the company has employed.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-329. Employment Agencies Acting Without a License

- A. The Department shall investigate the nature and scope of the business of any person, firm, corporation, or association when the person, firm, corporation, or association appears to meet the definition of an "employment agent" in A.R.S. § 23-521, but is operating without an employment agent license.
- B. The Department's investigation may include requesting written reports from the person, firm, corporation, or association in question, inspecting relevant records, and securing statements or depositions from witnesses.
- C. If, after a thorough investigation, the Department determines that the person, firm, corporation, or association is conducting the business of an employment agent in Arizona without an

employment agent license, the Department shall submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. § 23-536.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS**R20-5-401. Applicability**

This Article applies to all boilers, lined hot water heaters and pressure vessels operated in Arizona, except the following:

1. Boilers, lined hot water heaters and pressure vessels regulated by the United States Government;
2. Boilers, lined hot water heaters and pressure vessels operated in private residences or apartment complexes of not more than six units; and
3. Boilers, lined hot water heaters and pressure vessels operated on Indian reservations.
4. A lined hot water heater that does not exceed any of the following:
 - a. Heat input of 200,000 BTU per hour,
 - b. Water temperature of 210° F, and
 - c. Nominal water containing capacity of 120 gallons.

Historical Note

Former Rules B-1.1 and B-1.2. Former Section R4-13-401 repealed, new Section R4-13-401 adopted effective April 12, 1979 (Supp. 79-2). Section R4-13-401 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-401 recodified from R4-13-401 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-402. Definitions

In this Article, unless the text otherwise requires:

1. "Act" means A.R.S. Title 23, Chapter 2, Article 11.
2. "Alteration" means any change in the item described on the original manufacturer's data report which affects the pressure-containing capability of the boiler or pressure vessel, including but not limited to:
 - a. Non physical changes such as an increase in the maximum allowable working pressure either internal or external, or
 - b. A reduction in minimum design temperature of a boiler or pressure vessel requiring additional mechanical tests.
3. "ANSI" means American National Standards Institute, Inc., located at 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. "Apartment house" means a building with multiple family dwelling units, not used for commercial purposes, including condominiums and townhouses, where boilers are located in a common area outside of the individual dwelling units, such as a boiler room.
5. "Applicant" means an individual requesting permission to act as a special inspector under A.R.S. § 23-485.
6. "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, published by ASME International.
7. "ASME International" means a not for profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences throughout the world.

8. "Authorized Inspector" means an authorized representative under A.R.S. § 23-471(1) or a special inspector under A.R.S. § 23-485.
9. "Authorized representative" means the boiler chief or boiler inspector employed by the Division.
10. "Blowdown tank" or "Blowdown separator" means an ASME-stamped vessel designed to receive discharged steam or hot water from a boiler blowoff or blowdown piping system.
11. "Boiler" means a closed vessel in which fluid is heated for use external to itself by the direct application of heat resulting from the combustion of fuel, solid, liquid, or gaseous, or by the use of electricity.
12. "Certificate of Competency" means a person who has passed the National Board Exam.
13. "Certificate Inspection" means an internal inspection, when construction allows; otherwise, it means as complete an inspection as possible.
14. "Condemned" means a boiler or lined hot water heater that has been inspected and found to be unsafe by the Director or authorized inspector and has been stamped or tagged with the code XXX AZ8 XXX.
15. "CSD-1" means Controls and Safety Devices for Automatically Fired Boilers, published by ASME International, incorporated by reference in R20-5-404(A)(4).
16. "Direct fired jacketed steam kettle" means a pressure vessel with inner and outer walls that is subject to steam pressure and stress, is used to boil or heat liquids or to cook food, and falls under the scope of Section VIII, Division 1, Appendix 19 (Electrically Heated or Gas Fired Jacketed Steam Kettles) of the ASME Boiler and Pressure Vessel Code incorporated by reference in R20-5-404(A).
17. "External inspection" means an examination of a boiler or lined hot water heater performed by an authorized inspector when the boiler or lined hot water heater is in operation.
18. "Forced circulation hot water heater" means a hot water heater used for potable water, a hot water heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
19. "Fully attended power boiler" means a power boiler that is operated by an individual who meets the requirements of R20-5-408(C), and whose primary function is the care, maintenance, and operation of the boiler and the equipment associated with the boiler system.
20. "High temperature water boiler" means a boiler in which water is heated and operates at a pressure in excess of 160 psig (1.1 MPa) and/or temperature in excess of 250° F.
21. "Historical boilers" means steam boilers of riveted construction, preserved, restored, or maintained for hobby or demonstration use.
22. "Inspection certificate" means a document issued by the Division for the operation of a boiler, lined hot water heater or direct fired jacketed steam kettles when a certificate inspection has been successfully completed.
23. "Internal inspection" means a complete examination of the internal and external surfaces of a boiler or lined hot water heater by an authorized inspector after the boiler or lined hot water heater is shut down.
24. "Lined hot water heater" means the same as lined hot water storage heater defined in A.R.S. § 23-471(10) as a vessel which is closed except for openings through which water can flow, that includes the apparatus by which heat is generated and on which all controls and safety devices necessary to prevent pressures greater than 160 psig (1100 kPa gage) and water temperature greater than 210° F are provided, in which potable water is heated by the combustion of fuels, electricity, or any other heat source and removed for external use.
25. "MAWP" means maximum allowable working pressure.
26. "National Board Commissioned Inspector" means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.
27. "National Board Registration Number" means a unique number issued to a boiler, hot water heater or pressure vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
28. "NFPA" means National Fire Protection Association.
29. "Non-Standard Boiler" means any boiler, hot water heater or pressure vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
30. "Owner" or "Operator" means any individual or organization, including this state and all political subdivisions of this state, who have title, control or duty to control, the operation of one or more boilers, lined hot water heaters or pressure vessels.
31. "Portable boiler" means a boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose or wire.
32. "Relief valve" means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
33. "Repairs" means work necessary to restore a boiler, lined hot water heater or pressure vessel to operating condition that complies with this Article.
34. "Safety relief valve" means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a safety valve or as a relief valve.
35. "Safety valve" means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.
36. "Secondhand" means a boiler, lined hot water heater or pressure vessel that has changed both location and ownership since original installation.
37. "Shelter" means a permanent structure that provides protection from the weather.
38. "Special Inspector" means any authorized inspector who is issued an Arizona Commission but is not employed by the state of Arizona.
39. "State Identification Number" means a unique number assigned by the Division to a boiler, hot water heater or pressure vessel installed in Arizona.
40. "User" means a person or entity that does not have legal title to a boiler, lined hot water heater or pressure vessel, but has control and responsibility for the operation of a boiler, lined hot water heater or pressure vessel.

Historical Note

Former Rules B-2.1 through B-2.6. Former Section R4-13-402 repealed, new Section R4-13-402 adopted effective April 12, 1979 (Supp. 79-2). Amended effective March 31, 1981 (Supp. 81-2). Amended effective May 11, 1981 (Supp. 81-3). Amended effective May 31, 1985 (Supp. 85-3). Section R4-1-402 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-402

recodified from R4-13-402 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-403. Boiler Advisory Board

- A. Members of the boiler advisory board appointed by the Commission pursuant to A.R.S. § 23-474(2) shall serve for a period of three years. At the end of each three year term, the Commission may extend a member's term an additional three years or replace any member with an individual representing similar interest within the industry. The board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, labor and the public.
- B. The board shall hold an annual meeting and such other meetings as may be appropriate and shall conduct business at times and places arranged by the Commission.

Historical Note

Former Rules B-3.1 through B-3.3. Former Section R4-13-403 repealed, new Section R4-13-403 adopted effective April 12, 1978 (Supp. 79-2). Section R4-13-403 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-403 recodified from R4-13-403 (Supp. 95-1). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels

A. The following apply to this Article:

1. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII Division 1, 2, 3, IX, and B31.1 Power Piping, and addenda as of July 1, 2007, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International at Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
2. An owner or user of a boiler, lined hot water heater or pressure vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the boiler, lined hot water heater or pressure vessel in Arizona.
3. An owner or user of a gas-fired lined hot water heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3-2004, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. An owner or user of a boiler installed, repaired, replaced or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically

Fired Boilers, ANSI/ASME CSD-1-2006, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

5. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a boiler in Arizona. As an alternative, an owner or user of a boiler described in this subsection may comply with subsection (A)(4).
 6. A permanent source of outside air shall be provided for each boiler and lined hot water heater room to assure complete combustion of the fuel as required by ANSI Z223.1-2006, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
- B. The following registration requirements apply to this Article:**
1. All boilers and lined hot water heaters, including reinstalled and secondhand boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:
 - a. Non-standard boilers installed up to six months after the effective date of this Section,
 - b. Cast iron boilers, and
 - c. Cast aluminum boilers.
 2. All fired and unfired pressure vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.
- C. The following installation, maintenance, and repair requirements apply to this Article.**
1. An owner or user shall keep a signed copy of the Manufacturer's Data Report for a boiler or lined hot water heater at the location of the boiler or lined hot water heater and make the report available for review upon request from an authorized inspector.
 2. A boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the boiler and its contents without any vibration in the boiler or its connecting piping.
 3. There shall be at least 36 in. (915 mm) of clearance on each side of the boiler or lined hot water heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by the Division prior to installation of boiler or lined hot water heater.
 4. A boiler with a manhole shall have at least five feet clearance between the boiler manhole and any wall, ceiling, or piping.
 5. A newly constructed boiler room in excess of 500 square feet of floor area and containing one or more boilers with a fuel capacity of 1,000,000 BTU per hour or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the boiler or boilers. The owner

- or user shall ensure each exit is remotely located from other exits.
6. An owner or user shall keep a boiler or lined hot water heater room clean and with no obstructions to the boiler or lined hot water heater.
 7. An owner or user shall not store flammable or explosive materials in a boiler or lined hot water heater room.
 8. An owner or user shall not store combustibles less than three feet from any part of a boiler or lined hot water heater.
 9. If a boiler or lined hot water heater is moved outside Arizona for temporary use or repairs, the owner or user shall not reinstall the boiler or lined hot water heater in Arizona until the owner or user notifies and receives verbal or written approval from the Division under R20-5-419 to reinstall the boiler or lined hot water heater. If the Division grants approval to reinstall the boiler or lined hot water heater, the owner or user shall not operate the reinstalled boiler or lined hot water heater until the owner or user receives an inspection certificate from the Division under this Article.
 10. Before a new power boiler or a used or secondhand boiler or pressure vessel is installed, an inspection shall be made by an authorized inspector of this state, or by a National Board Commission Inspector. This inspection is to assess the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the owner or user of the boiler or pressure vessel with the Division for approval. This application shall contain the following information:
 - a. Name of the owner or user;
 - b. Mailing address of owner or user;
 - c. Business telephone number of owner or user;
 - d. Installation name and address;
 - e. Installation date;
 - f. Start up date;
 - g. Name and address of boiler/pressure vessel insurance company;
 - h. Arizona serial number of the boiler/pressure vessel being replaced, if applicable;
 - i. Description of the new, used or secondhand power boiler/ pressure vessel as to include:
 - i. Manufacture's name,
 - ii. Date manufactured,
 - iii. Maximum allowable pressure or temperature of boiler/pressure vessel, and
 - iv. National Board registration number;
 - j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the object;
 - k. Name, title and phone number of the contact person on the site of installation; and
 - l. Signature, title and date of the person submitting the application.
 11. Before the owner or user installing a used boiler or pressure vessel, the boiler or pressure vessel shall pass a hydrostatic test that is witnessed by an authorized inspector, authorized representative or by any National Board Commissioned inspector in accordance with R20-5-411.
 12. An owner or user of a portable boiler shall notify an authorized inspector before installing the portable boiler and shall not operate the portable boiler until the owner or user receives an inspection certificate from the Division.

Historical Note

Former Rules B-4.1 through B-4.3. Former Section R4-13-

404 repealed, new Section R4-13-404 adopted effective April 12, 1979 (Supp. 79-2). Amended subsection (P) by adding paragraph (7) and amended subsection (Q) effective October 3, 1980 (Supp. 80-5). Section R4-13-404 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-404 recodified from R4-13-404 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-405. Repealed

Historical Note

Former Section R4-13-405 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-405 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-405 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-405 recodified from R4-13-405 (Supp. 95-1). Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-406. Repairs and Alterations

- A. If repairs or alterations may affect the working pressure or safety of a boiler, an owner, user, or operator shall consult with an authorized inspector before having the repairs or alterations made. The authorized inspector shall provide the owner, user, or operator information regarding the best method to repair or alter the boiler. The owner, user, or operator shall ensure that an authorized inspector inspects and approves the repairs and alterations after the repairs or alterations are made.
- B. Repairs and alterations to boilers shall conform to the applicable provisions of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- C. An owner or user shall not permit an individual to remove or repair a safety appliance of a boiler or lined hot water heater in operation. An owner or user shall not permit a person to remove or repair a safety appliance of a boiler or lined hot water heater not in operation except as provided under the ASME Code. If an owner or user permits a person to remove a safety appliance from a boiler or lined hot water heater as provided under the ASME Code, then the owner or user shall ensure that the safety appliance is reinstalled in proper working order before the boiler or lined hot water heater is placed back into operation.
- D. No person shall alter in any manner a safety valve, relief valve, or safety relief valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23 2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- E. Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or

editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

- F. Beginning six months after the effective date of this Section replacement of fittings or appliances shall comply with the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII, Division 1, 2, 3, IX and B31.1 Power Piping, and addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org>.

Historical Note

Former Section R4-13-406 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-406 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-406 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-406 recodified from R4-13-406 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-407. Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates

- A. An authorized inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. If an owner, user, or operator fails to comply with the requirements for an inspection or pressure test under this Article, the Division shall withhold the inspection certificate until the owner, user, or operator complies with the requirements.
- C. An authorized inspector shall not engage in the sale of any object or device relating to boilers, lined hot water heaters, direct fired jacketed steam kettles or equipment associated with boilers, or lined hot water heaters or direct fired jacketed steam kettles.
- D. Under A.R.S. § 23-485(D), the Special Inspector shall file the inspection reports by entering data into the Division's Web-based inspection entry form, by submitting a paper inspection report issued by the Division or by electronic transfer of data between the insurance company's database and the Division's database. The inspection report shall contain the following:
1. Whether it is a Certificate or non-Certificate inspection;
 2. Whether it is an internal or external inspection;
 3. Name of location, address and phone number of the object;
 4. Name, address and phone number of owner or responsible party;
 5. Contact person's name and phone number at the inspection location;
 6. State Identification Number;
 7. Certificate due date;

8. Certificate duration;
 9. Whether the object is active, inactive or scrapped;
 10. MAWP permitted or allowed;
 11. National Board registration number;
 12. Name of the manufacturer and the year the object was built;
 13. Special location in plant, if applicable;
 14. Boiler type;
 15. Purpose of the boiler;
 16. Specify type of fuel used;
 17. Whether the firing method is automatic, manual or unknown;
 18. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
 19. Whether the boiler is fully attended as per R20-5-408(C);
 20. Heating Surface/BTU Input/ Kilowatt (Kw) Input, as applicable;
 21. Whether the heating surface type is stamped, computed or unknown;
 22. Minimum safety valve relief capacity required;
 23. Whether the minimum safety valve relief capacity type is BTU/Hr, LBS/Hr or unknown;
 24. Number of temperature/pressure controls, as applicable;
 25. Owner number assigned by the owner to specifically identify object's location;
 26. Inspection date;
 27. Whether the certificate is posted;
 28. Safety Valve Total Capacity;
 29. Safety Valve #1 set pressure;
 30. Safety Valve #2 set pressure;
 31. Safety Valve #3 set pressure;
 32. Whether the object has been hydro tested;
 33. Hydro Test (psi), if applicable;
 34. Whether Pressure/Altitude Gage was tested;
 35. Whether of the condition of the object is okay to issue a certificate;
 36. Inspection comments, condition of boiler;
 37. Violations noted;
 38. Inspector name and Arizona Commission number; and
 39. National Board Commission number.
- E. The Division shall issue to an owner or user an inspection certificate within 30 calendar days of receipt of an inspection report that documents a boiler, lined hot water heater or direct fired jacketed steam kettle that complies with the Act and this Article. An owner or user of a boiler, lined hot water heater or direct fired jacketed steam kettle shall post the inspection certificate in the establishment where the boiler, lined hot water heater or direct fired jacketed steam kettle is located.
- F. An owner, user, or operator shall ensure that an authorized inspector tags or stamps a steam boiler with an identification number assigned by the Division immediately after installing, but before operating, a new steam boiler, or when an authorized inspector performs an initial certificate inspection of an existing steam boiler. The identification number shall be at least 5/16" in height and in the following format: AZ-# # # #.
- G. The Division shall mark with a metal dye stamp a boiler or lined hot water heater identified by the Division as not safe for further service, with the code "XXX AZ8 XXX" which shall designate that the boiler or lined hot water heater is condemned.
- H. For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the boiler or lined hot water heater shall apply.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New

Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-407 recodified from R4-13-407 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-408. Frequency of Inspection

- A. An owner, user, or operator of a power boiler shall ensure that an authorized inspector performs a certificate inspection and external inspection of the power boiler every 12 months. An authorized inspector shall perform the external inspection while the power boiler is in operation to ensure that safety devices of the power boiler are operating properly.
- B. An authorized inspector shall perform an internal inspection and pressure test on a boiler, lined hot water heater or pressure vessel if the inspector determines from an external inspection of the boiler, lined hot water heater or pressure vessel that continued operation of the boiler, lined hot water heater or pressure vessel is a danger to the public or worker safety.
- C. The Division shall issue a 12 month inspection certificate to an owner or user to operate a fully attended power boiler if:
 - 1. An owner or user ensures that an authorized inspector performs an external safety inspection and audit of the operational methods and logs of the fully attended power boiler at least every 12 months and performs an internal inspection of the fully attended power boiler at least every 36 months;
 - 2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits.
 - 3. Records are available for review, that indicate:
 - a. The date, time, and reason the boiler is out of service; and
 - b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the boiler or its parts; and
 - 4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size boilers, such as NFPA 85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements.
 - 5. Inspection reports of an authorized inspector document that the fully attended power boiler complies with A.R.S. § 23-471 et seq. and this Article.
- D. An owner, user, or operator of a direct-fired jacketed steam kettle shall ensure that an authorized inspector performs a certificate inspection of the direct-fired jacketed steam kettle every 24 months.
- E. An owner, user, or operator of a heating or process boiler, not exceeding 15 p.s.i. maximum allowable working pressure, steam or vapor, shall ensure that an authorized inspector performs a certificate inspection of the heating or process boiler every 24 months.
- F. An owner or user of a hot water heating or hot water supply boiler, or lined hot water heater shall ensure that an authorized inspector performs a certificate and external inspection of the hot water heating or hot water supply boiler or lined hot water heater at the time the hot water heating or hot water supply boiler or lined hot water heater is installed. An inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New

Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-408 recodified from R4-13-408 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-409. Notification and Preparation for Inspection

- A. An authorized inspector shall perform a certificate inspection at a time mutually agreeable to the inspector and owner, user, or operator.
- B. Before an authorized inspector performs an internal inspection of a boiler, an owner, user, or operator shall:
 - 1. Cool the furnace and combustion chambers;
 - 2. Drain the water from the boiler;
 - 3. Remove the manhole and handhole plates, wash-out plugs, and inspection plugs in water column connections;
 - 4. Remove insulation or brickwork if necessary to determine the condition of the boiler, headers, furnace, supports, and other parts;
 - 5. Remove the pressure gauge for testing;
 - 6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
 - 7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other boilers. Open the free blow drain or cock between the non-return and steam stop valves;
 - 8. Close, tag, and padlock the blowoff valves after draining the boiler; and
 - 9. Open all drains and vent lines.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New

Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-409 recodified from R4-13-409 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

R20-5-410. Report of Accident

An owner or user shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a boiler, lined hot water heater or direct fired jacketed steam kettle. A person shall not remove or disturb the involved boiler, lined hot water heater, direct fired jacketed steam kettle or parts of the boiler, lined hot water heater or direct fired jacketed steam kettle before an investigation by an authorized inspector, except for the purpose of preventing personal injury or limiting consequential damage.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New

Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-410 recodified from R4-13-410 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-411. Hydrostatic Tests

The owner or user shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New

Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-411 recodified from R4-13-411 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

tive August 18, 2009 (Supp. 09-3).

R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices

- A. An owner, user, or operator shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an operator's or inspector's ability to safely clean, repair, or inspect a boiler or lined hot water heater.
- B. A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the safety valve or safety relief valve.
- C. In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for boilers and steam jacked kettles in R20-5-404(A).

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-412 recodified from R4-13-412 (Supp. 95-1). Amended effective October 9, 1998 (98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-413. Safety and Safety Relief Valves

- A. A valve shall not be placed between a safety valve or a safety relief valve and installed on a boiler or lined hot water heater, or between a safety valve or a safety relief valve and the discharge pipe attached to the boiler or lined hot water heater.
- B. When a power boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, safety valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the boiler;
- C. Safety valves, safety relief valves and relief valves shall conform to the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, and addenda as of January 1, 2008, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may be obtained from the ASME, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-413 recodified from R4-13-413 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-414. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-414 recodified from R4-13-414 (Supp. 95-1). Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains

- A. Except as provided in this Section, an owner or user of blowdown and blowoff equipment shall comply with the National Board Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991 Edition, incorporated by reference. This incorporation does not include any

later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

- B. Blowdown from a boiler is a hazard to life and property.
- C. Blowdown from a boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
- D. The thickness of a blowdown vessel shall be at least 3/16".
- E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
- F. Blowdown separators may be used with boilers instead of boiler blowdown tanks, provided that blowdown separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
- G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for power boilers: Each power boiler and high temperature water boiler shall be installed and maintained according to ASME Code, Section 1 and B31.1, incorporated by reference in R20-5-404, at the time of installation.
- H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating boilers and hot water heaters:
 1. A hot water heating boiler or hot water heater shall have a bottom blowdown or drain pipe connection fitted with a valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).
 2. Discharge outlets of blowdown pipes, safety valves and other piping shall be located and structurally supported to prevent injury to individuals.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-415 recodified from R4-13-415 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-416. Maximum Allowable Working Pressure

- A. The ASME Code under which a boiler was constructed and stamped shall determine the maximum allowable working pressure for the ASME-stamped boiler.
- B. If components in the boiler or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the boiler or hot water heater, the pressure setting for the safety or safety relief valve on the boiler or hot water heater shall be based upon the component with the lowest maximum allowable working pressure rating.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-416 recodified from R4-13-416 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles

- A. An owner or user of a boiler, hot water heater or direct fired jacketed steam kettle constructed under the ASME Code, Sec-

tions I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer's maintenance and operation instructions for the boiler, hot water heater or direct fired jacketed steam kettle.

- B.** In addition to the requirements of subsection (A), an owner or user of a boiler constructed under the ASME Code, Sections I, IV, shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.
1. On a daily basis, the owner or user shall:
 - a. Test the low-water fuel cutoff and alarm, and
 - b. Check the burner flame for proper combustion.
 2. On a weekly basis, the owner or user shall:
 - a. Check for proper ignition, and
 - b. Check the flame failure detection system.
 3. On a monthly basis, the owner or user shall:
 - a. Test all fan and air pressure interlocks,
 - b. Check the main burner safety shutoff valve,
 - c. Check the low fire start switch,
 - d. Test fuel pressure and temperature interlocks of oil-fired units, and
 - e. Test the high and low fuel pressure switch of gas-fired units.
 4. Every six months, the owner or user shall:
 - a. Inspect burner components;
 - b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
 - c. Check wiring of all interlocks and shutoff valves;
 - d. Recalibrate all indicating and recording gauges; and
 - e. Check steam and blowdown piping and valves.
 5. Annually, the owner or user shall:
 - a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
 - b. Check all coils and diaphragms; and
 - c. Test operating parts of all safety shutoff and control valves.
- C.** An owner or user of a power boiler or high temperature boiler shall designate an individual who meets the requirements of subsection (D) to operate the boiler. An owner or user may operate the boiler if the owner or user meets the requirements of subsection (D).
- D.** An operator of a power boiler or high temperature water boiler shall meet the following minimum requirements:
1. Knowledge of and an ability to explain the function and operation of all safety controls of the boiler,
 2. Ability to start the boiler in a safe manner,
 3. Knowledge of all safe methods of feeding water to the boiler,
 4. Knowledge of and the ability to blow down the boiler in a safe manner,
 5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
 6. Knowledge of and the ability to safely shut down the boiler.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-417 recodified from R4-13-417 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-418. Non-standard Boilers

An owner or user shall remove from service a boiler, hot water heater or pressure vessel that does not bear an ASME stamp unless the boiler owner or user request a variance under R20-5-429.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-418 recodified from R4-13-418 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater

- A.** The Division shall grant or deny approval to reinstall a boiler or lined hot water heater within three business days after an owner or user requests approval to reinstall the boiler or lined hot water heater. The order of the Division granting or denying approval to reinstall a boiler shall be in writing.
- B.** The Division shall grant approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater complies with A.R.S. § 23-471 et seq. and this Article. The Division shall deny approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater does not comply with A.R.S. § 23-471 et seq. and this Article.
- C.** An order of the Division denying approval to reinstall a boiler shall be final unless an owner or user requests a hearing under A.R.S. § 23-479 within 15 days after the Division mails the order. The owner or user requesting a hearing shall have the burden to prove that a boiler meets the requirements of A.R.S. § 23-471 et seq. and this Article.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-419 recodified from R4-13-419 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-420. Special Inspector Certificate under A.R.S. § 23-485

- A.** Review Time-frames.
1. Administrative Completeness Review.
 - a. The Division shall determine whether an application to take a written examination or request for a special inspector certificate under A.R.S. § 23-485 is complete within three days of receipt of the application or request. The Division shall inform the applicant whether the application or request is complete or incomplete by written notice. If the application or request is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.
 - b. The Division shall deem an application or request withdrawn if an applicant fails to file a complete application or request within 10 days of being notified by the Division that the application or request is incomplete, unless the applicant obtains an extension to provide the missing information. An applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than 10 days after the Division mails notice that the application or request is incomplete. The written request for an extension shall state the reasons the applicant is unable to meet the 10-day deadline. If an extension will enable the applicant to assemble and submit the missing information, the Division shall grant an extension of not more than 10 days and provide written notice of the extension to the applicant.
 2. Substantive review.

- a. Application to take written examination under A.R.S. § 23-485(A). Within three days after the Division deems an application complete under subsection (B), the Division shall determine whether the applicant is eligible to take the National Board Examination.
 - b. Request for special inspector certificate under A.R.S. § 23-485. Within three days after the Division deems a request complete under subsection (C), the Division shall determine whether the applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
3. Overall review. The overall review period shall be six days, unless extended under A.R.S. § 41-1072 et seq.
- B.** Application to take Written Examination under A.R.S. § 23-485(A).
 1. An individual requesting to take the written examination under A.R.S. § 23-485(A) shall complete an application to take the National Board Examination and submit the application to the Division at least 45 days before the date of the examination.
 2. The application to take the National Board Examination shall be filed with the Division. An application is considered filed when it is received at the office of the Division and stamped by the Division with the date of filing.
 3. An application to take the National Board Examination shall be on a legible form, paper or electronic, issued to the Division, with the following information:
 - a. Full legal name,
 - b. State or country of residency,
 - c. Mailing address,
 - d. Telephone number,
 - e. E-mail address, and
 - f. Employer's name and address.
- C.** Application for Special Inspector Certificate under A.R.S. § 23-485. An application for a special inspector certificate under A.R.S. § 23-485 is deemed complete under subsection (A)(1) when the following is filed with the Division:
 1. The applicant provides written documentation that the applicant holds a certificate of competency as an inspector of boilers or lined hot water heaters for a state that has a standard of examination equal to that of Arizona or the applicant is a National Board Commissioned Inspector, and
 2. The applicant provides proof of employment as a full time inspector for a company conducting business in Arizona and whose duties as an inspector include making inspections of boilers or lined hot water heaters to be used or insured by the company and not for resale.
- D.** If an applicant meets the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a certificate to the applicant under subsection (C). If an applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a written notice denying eligibility to the applicant. The Commission shall deem the notice denying eligibility final if an applicant does not request a hearing within 15 calendar days after the Division mails the notice.
- E.** Written Examination under A.R.S. § 23-485(A).
 1. The written examination described in A.R.S. § 23-485(A) shall be the National Board Examination of the National Board of Boiler and Pressure Vessel Inspectors.
 2. The Division shall administer the National Board Examination the first Wednesday and Thursday of every March, June, September, and December to eligible applicants. Within two days after the Division administers the National Board Examination, the Division shall return the examinations of eligible applicants to the National Board of Boiler and Pressure Vessel Inspectors. Examinations shall be graded by the National Board of Boiler and Pressure Vessel Inspectors.
3. The Division shall provide written notice to an applicant of the applicant's grade for the National Board Examination within three days after the Division receives notice of the grade from the National Board of Boiler and Pressure Vessel Inspectors.
4. The Division shall issue a certificate of competency to an applicant who passes the National Board Examination.
- F.** Issuance of Special Inspector Certificate. The Division shall issue a special inspector certificate, A.R.S. § 23-485, to an applicant no later than 15 calendar days after the Division determines that an applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
- G.** Hearing on Denial of Eligibility for Special Inspector Certificate.
 1. A request for hearing protesting a notice of eligibility shall be in writing and signed by the applicant or the applicant's legal representative. The applicant shall file the request for hearing with the Division.
 2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be stenographically recorded.
 3. The Chair of the Commission or designee shall preside over hearings held under this Section. The Chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 4. A decision of the Commission to deny or grant eligibility for a special inspector certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a special inspector certificate is final unless an applicant files a request for review within 15 days after the Commission mails its order.
 5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an applicant:
 - a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the applicant seeking review was deprived of a fair hearing;
 - b. Misconduct by the Division;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 - e. Excessive or insufficient sanctions or penalties imposed at hearing;
 - f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 - g. Bias or prejudice of the Division; and
 - h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
 6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.

7. The Commission's decision upon review is final unless an applicant seeks judicial review as provided in A.R.S. § 23-483.

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-420 recodified from R4-13-420 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-421. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-421 recodified from R4-13-421 (Supp. 95-1).

R20-5-422. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-422 recodified from R4-13-422 (Supp. 95-1).

R20-5-423. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-423 recodified from R4-13-423 (Supp. 95-1).

R20-5-424. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-424 recodified from R4-13-424 (Supp. 95-1).

R20-5-425. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-425 recodified from R4-13-425 (Supp. 95-1).

R20-5-426. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-426 recodified from R4-13-426 (Supp. 95-1).

R20-5-427. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-427 recodified from R4-13-427 (Supp. 95-1).

R20-5-428. Repealed

Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-428 recodified from R4-13-428 (Supp. 95-1).

R20-5-429. Variance

- A. Any owner or user may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the owner or user shall maintain.
- B. A variance may be modified or revoked upon application by an owner, user or the Director, on the Director's own motion at any time after six months from issuance if the owner or user

has not complied with the variance or if the variance does not protect the health and safety of employees or general public.

- C. The application for a variance shall be made on the form issued by the Division and contains the following information:
1. Owner or user's name and company name;
 2. Mailing address;
 3. Telephone number;
 4. Fax number;
 5. Contact person;
 6. Contact person's telephone number;
 7. Address or location of proposed variance;
 8. Type of facility to include;
 - a. Variance description;
 - b. Justification for variance;
 - c. Component or system involved;
 - d. Supporting documentation for variance;
 - e. Identify the statute, rule, code or standard to justify the variance; and
 9. Printed name and title of owner or user, signature of owner or user and date.
- D. If an owner or user does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-430. Forced Circulation Hot Water Heaters

- A. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the hot water heater unit against overheating, at all allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored.
- B. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shut-down switch or circuit breaker and shall be located just outside the hot water heater room door and marked for easy identification. The shutdown switch shall be installed in a manner to safeguard against tampering. If a hot water heater room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the hot water heater room there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-431. Code Cases

Code cases approved for use by the ASME Code Committee are allowed to be used in the design, fabrication and testing of boilers and pressure vessels provided approval from the Chief Boiler Inspector is obtained prior to use.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

R20-5-432. Historical Boilers

Historical boilers shall require an initial Certificate inspection by an authorized inspector, followed by a Certificate inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pres-

sure retaining boundary shall be monitored and recorded on the inspection report, in accordance with R20-5-407(D), to the owner and the Division's electronic copy.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

ARTICLE 5. ELEVATOR SAFETY

R20-5-501. Repealed

Historical Note

Former Rule E-1. Amended effective November 9, 1979 (Supp. 79-6). R20-5-501 recodified from R4-13-501 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

R20-5-502. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "ASME" means American Society of Mechanical Engineers.
2. "AZFS Key" means Arizona Firefighters Service Key, a universal key used by a firefighter to operate a conveyance during an emergency.
3. "Chief" means the head inspector of the Elevator Safety Section of the Division of Occupational Safety and Health.
4. "Elevator Safety Section" means the Elevator Safety Section of the Division of Occupational Safety and Health of the Industrial Commission of Arizona.
5. "Inspection" means the official determination by an inspector of the condition of all parts of the equipment on which the safe operation of an elevator depends.
6. "Major Alteration" means work performed to any conveyance that is not routine maintenance or repair.
7. "State Serial Number" is a unique number assigned by the Chief Elevator Inspector to each individual elevator, dumbwaiter, escalator, and moving walks.

Historical Note

Former Rule E-2. R20-5-502 recodified from R4-13-502 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-503. Repealed

Historical Note

Former Rule E-3. R20-5-503 recodified from R4-13-503 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

R20-5-504. Safety Standards for Platform Lifts and Stairway Chairlifts

Every owner or operator under A.R.S. § 23-491.02 shall comply with the American Society of Mechanical Engineers Safety Standard for Platform Lifts and Stairway Chairlifts ASME A18.1-2005, with amendments as of November 29, 2005, which are incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

Historical Note

Former Rule E-4. R20-5-504 recodified from R4-13-504 (Supp. 95-1). Section repealed; new Section made by

final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-505. Certificate of Inspection

The owner or operator under A.R.S. § 23-491.02 shall keep the Industrial Commission's Certificate of Inspection at the same location as the elevator, dumbwaiter, escalator, moving walk, or related equipment and make the certificate available for inspection and copying upon request. The State Serial Number shall be posted or displayed in the elevator cab, and on the escalators, the State Serial Number shall be affixed to the right, at the lower end of the unit.

Historical Note

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-506. Recordkeeping

- A. The Elevator Safety Section shall assign a State Serial Number to every elevator, dumbwaiter, escalator, and moving walk for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect in the elevator machine room.
- B. The owner or operator shall notify the Elevator Safety Section at least 90 days before installation, relocation, or major alteration of a dumbwaiter with automatic transfer device within the state, elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.
- C. The building owner or operator shall notify the Elevator Safety Section within 24 hours of every accident involving personal injury or disabling damage to a dumbwaiter with automatic transfer device, an elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.

Historical Note

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 Safety Code for Elevators and Escalators, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007.

Historical Note

Former Rule R4-13-507 repealed, new Section R4-13-

507 adopted effective November 9, 1979 (Supp. 79-6). Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-508. Safety Standards for Belt Manlifts

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Standard for Belt Manlifts, ASME A90.1-2003, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI, A10.4-2007, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-510. Safety Requirements for Material Hoists

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Material Hoists, ANSI, A10.5-2006, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6).

Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks

Every Elevator Inspector under A.R.S. § 23-491.05 shall use the American National Standard Institute, Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME, A17.2-2004, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-511 recodified from R4-13-511 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-512. Expired

Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-512 recodified from R4-13-512 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 2320, effective May 19, 2005 (Supp. 05-2).

R20-5-513. Firefighters' Emergency Operation

All conveyances provided with firefighters' emergency operation installed per ASME, A17.1-2007, incorporated by reference, shall utilize the AZFS Key.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of March 26, 2012, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after March 26, 2012.

Historical Note

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-601 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended effective November 14,

1984 (Supp. 84-6). Amended effective March 3, 1987 (Supp. 87-1). Amended effective April 22, 1988; amended effective May 26, 1988 (Supp. 88-2). Amended effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4). Amended effective September 13, 1993 (Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; R20-5-601 recodified from R4-13-601 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 851, effective February 5, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4).

R20-5-601.01. Fall Protection for Residential Construction

Each employer shall comply with the requirements in A.R.S. Title 23, Chapter 2, Article 13. These requirements shall apply to all conditions and practices related to residential construction activity by all employers, both public and private, in the state of Arizona.

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 1144, effective May 25, 2012 (Supp. 12-2).

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of March 26, 2012, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after March 26, 2012.

Historical Note

Editorial correction (Supp. 75-1). Amended as an emer-

gency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). New Section R4-13-602 adopted effective July 30, 1980 (Supp. 80-4). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-602 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended subsection (A) effective October 1, 1981 (Supp. 81-5). Amended subsection (A) effective March 5, 1982 (Supp. 82-2). Amended subsection (A) effective May 6, 1983 (Supp. 83-3). Amended subsection (A) effective April 6, 1984 (Supp. 84-2). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended subsection (A) effective October 18, 1984 (Supp. 84-5). Editorial correction, amendment October 18, 1984, withdrawn for subsequent certification. Amended effective November 14, 1984, and December 14, 1984 (Supp. 84-6). Amended subsection (A) effective June 9, 1986 (Supp. 86-3). Amended subsection (A) effective March 3, 1987 (Supp. 87-1). Amended subsection (A) effective June 26, 1987 (Supp. 87-2). Amended subsection (A) effective April 22, 1988; amended subsection (A) effective May 26, 1988 (Supp. 88-2). Amended subsection (A) effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective March 20, 1992 (Supp. 91-2). Amended effective June 16, 1992 (Supp. 92-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4). Amended effective May 14, 1993 (Supp. 93-2). Amended effective September 13, 1993 (Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective July 19, 1994 (Supp. 94-3). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; Amended effective February 10, 1995; R20-5-602 recodified from R4-13-602 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 5137, effective October 19, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 576, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 2927, effective July 31, 2007 (07-3). Amended by final rulemaking at 14 A.A.R. 193, effective January 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 14 A.A.R. 4337, effective December 30, 2008 (Supp. 08-4). Amended by final rulemaking at 15 A.A.R. 1564, effective August 31, 2009 (Supp. 09-3). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final

rulemaking at 17 A.A.R. 109, effective January 12, 2011 (Supp. 11-1). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4).

R20-5-602.01. Subpart T, Commercial Diving Operations

Each employer shall comply with the standards in Subpart T of the Federal Occupational Safety and Health Standards for the General Industry as published in 29 CFR 1910, with amendments as specified in R20-5-602, except that the exemption set forth in 29 CFR 1910.401(a)(2)(ii) shall not apply. Subpart T shall apply to any diving operation performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 193, effective January 8, 2008 (Supp. 08-1).

R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928

Each employer shall comply with the standards in Subparts A through D inclusive of the Federal Occupational Safety and Health Standards for Agriculture, as published in 29 CFR 1928, with amendments as of March 7, 1996, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This incorporation by reference does not include amendments or editions to 29 CFR 1928 published after March 7, 1996.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Former Section R4-13-603 repealed, new Section R4-13-603 adopted as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-603 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective April 22, 1988 (Supp. 88-2). Amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective February 10, 1995. R20-5-603 recodified from R4-13-603 (Supp. 95-1). Amended effective April 1, 1997 (Supp. 97-2).

R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913

Each employer pursuant to A.R.S. § 23-403(B) shall comply with Federal Regulations, Title 29, Part 1913, with amendments as of May 23, 1980 (amendments of May 23, 1980 on file with the Secretary of State), which are hereby adopted and incorporated by reference as if set forth fully herein. This regulation applies to OSHA Access to Employee Medical Records.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New rule adopted effective November 14,

1984 (Supp. 84-6). R20-5-604 recodified from R4-13-604 (Supp. 95-1).

R20-5-605. Hoes for Weeding or Thinning Crops

- A. The use of a hoe with a handle less than four feet in length for weeding or thinning crops is prohibited. This prohibition is based upon the existence of other practical and adequate alternatives to the use of these short-handle hoes.
- B. This rule does not apply to greenhouse or nursery operations.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New Section R4-13-605 adopted effective September 7, 1984 (Supp. 84-5). R20-5-605 recodified from R4-13-605 (Supp. 95-1).

R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604

For the purposes of the standards enumerated in the federal occupational safety and health standards incorporated into R20-5-601, R20-5-602, R20-5-603, and R20-5-604:

1. "Agency" means the Industrial Commission of Arizona.
2. "Assistant Secretary" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
3. "Assistant Secretary of Labor for Occupational Safety and Health" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
4. "Office of the Solicitor of Labor" means Legal Counsel for the Industrial Commission of Arizona.
5. "OSHA" means Arizona Division of Occupational Safety and Health.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New Section R4-13-606 adopted effective May 31, 1985 (Supp. 85-3). R20-5-606 recodified from R4-13-606 (Supp. 95-1).

R20-5-607. Expired

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-607 repealed, former emergency adoption effective October 29, 1980, adopted and amended effective March 2, 1981 (Supp. 81-2). R20-5-607 recodified from R4-13-607 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5062, effective September 30, 2003 (Supp. 03-4).

R20-5-608. Definitions

- A. "Act" means the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
- B. The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in these rules.
- C. "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing fifteen working days, the day of the receipt of any notice shall

not be included, and the last day of the fifteen working days shall be included.

- D. "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Division, Industrial Commission of Arizona, to conduct inspections.
- E. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, stores, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with requirements of subsection (A) of this Section.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-608 repealed, new Section R4-13-608 adopted effective March 2, 1981 (Supp. 81-2). R20-5-608 recodified from R4-13-608 (Supp. 95-1).

R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards

- A. Each employer shall post and keep posted a notice or notices, to be furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Industrial Commission. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.
- B. Copies of the Act, all regulations published in this Chapter and applicable standards will be available at all offices of the Arizona Division of Occupational Safety and Health. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.
- C. Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of A.R.S. § 23-418 of the Act.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-609 repealed, former Section R4-13-608 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-609 effective March 2, 1981 (Supp. 81-2). R20-5-609 recodified from R4-13-609 (Supp. 95-1).

R20-5-610. Authority for Inspection

- A. The Director of the Division of Occupational Safety and Health or his authorized representative upon presentation of credentials shall be permitted to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, or place of environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee and to review records required by the Act and regulations published in this Article and other records which are directly related to the purpose of the inspection.
- B. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Williams-Steiger Occupational Safety and Health Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education and Welfare under Section 8 of the Williams-Steiger Occupational Safety and Health Act and pursuant to 29 CFR Part 1903 shall not affect the authority of any state to conduct inspections in accordance with agreements and plans under Section 18 of the Williams-Steiger Occupational Safety and Health Act.
- C. Prior to inspecting areas containing information which is classified by an agency of the United States government in the interests of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

Historical Note

Adopted effective February 28, 1975 (Supp. 75-1). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-610 repealed, former Section R4-13-609 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-610 effective March 2, 1981 (Supp. 81-2). R20-5-610 recodified from R4-13-610 (Supp. 95-1).

R20-5-611. Objection to Inspection

- A. Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to privately question any employer, owner, operator, agent, or employee, in accordance with rule R20-5-610, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with rule R20-5-615, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal

and the reason therefore to the Director of the Division. The Director shall immediately consult with the Industrial Commission and its legal counsel, who shall promptly take appropriate action, including compulsory process if necessary.

- B. Compulsory process may be sought in advance of an inspection or reinvestigation if, in the judgment of the Director of the Division and the Industrial Commission Chief Legal Counsel, circumstances exist including but not limited to specific evidence of an existing violation or reasonable legislative or administrative standards for conducting an inspection which make pre-inspection process desirable or necessary.
- C. With the approval of the Industrial Commission, and the Industrial Commission Chief Legal Counsel, compulsory process may also be obtained by the Director of the Division or his designee.
- D. For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

Historical Note

Adopted effective June 19, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-611 repealed, former Section R4-13-610 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-611 effective March 2, 1981 (Supp. 81-2). R20-5-611 recodified from R4-13-611 (Supp. 95-1).

R20-5-612. Entry Not a Waiver

Any permission to enter, inspect, review records, or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

Historical Note

Adopted effective June 19, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-612 repealed, former Section R4-13-611 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-612 effective March 2, 1981 (Supp. 81-2). R20-5-612 recodified from R4-13-612 (Supp. 95-1).

R20-5-613. Advance Notice of Inspections

- A. Advance notice of inspections may not be given except in the following situations:
 1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
 2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
 3. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in an inspection; and
 4. In other circumstances where the Division Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- B. In the situations described in subsection (A) of this Section, advance notice of inspections may be given only if authorized by the Division Director. When advance notice is given, it shall be the employer's responsibility promptly to notify the

authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See rule R20-5-615(B) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this subsection promptly to inform the authorized representative of the employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer to promptly inform such representative of the inspection may be subject to citation and penalty under A.R.S. § 23-408 of the Act. Advance notice in any of the situations described in subsection (A) of this Section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and other unusual circumstances.

Historical Note

Adopted effective July 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-613 repealed, former Section R4-13-612 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-613 effective March 2, 1981 (Supp. 81-2). R20-5-613 recodified from R4-13-613 (Supp. 95-1).

R20-5-614. Conduct of Inspections

- A. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in rule R20-5-610 which they wish to review.
- B. Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.
- C. In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to ensure that such actions with flash, spark producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- D. The conduct of inspections shall be such as to preclude unreasonable disruption to the operations of the employer's establishment.
- E. At the conclusion of an inspection, a Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-614 repealed, former Section R4-13-613 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-614 effective March 2, 1981 (Supp. 81-2).

R20-5-614 recodified from R4-13-614 (Supp. 95-1).

R20-5-615. Representatives of Employers and Employees

- A. Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- B. Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- C. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.
- D. Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of rule R20-5-616(B). With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-615 repealed, former Section R4-13-614 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-615 effective March 2, 1981 (Supp. 81-2).

R20-5-615 recodified from R4-13-615 (Supp. 95-1).

R20-5-616. Trade Secrets

- A. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, environmental samples, shall

be labeled "confidential-trade secret" and shall not be disclosed except in accordance with provisions of A.R.S. § 23-426.

- B. Upon the request of an employer, any authorized representative of employees under rule R20-5-615 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, a Compliance Safety and Health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-616 repealed, former Section R4-13-615 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-616 effective March 2, 1981 (Supp. 81-2).

R20-5-616 recodified from R4-13-616 (Supp. 95-1).

R20-5-617. Consultation with Employees

Compliance Safety and Health Officers may privately consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act, which he has reason to believe exists in the workplace, to the attention of the Compliance Safety and Health Officer.

Historical Note

Adopted effective January 21, 1976 (Supp. 76-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-617 repealed, former Section R4-13-616 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-617 effective March 2, 1981 (Supp. 81-2).

R20-5-617 recodified from R4-13-617 (Supp. 95-1).

R20-5-618. Complaints by Employees

- A. A copy of a complaint submitted pursuant to A.R.S. § 23-408(E) shall be provided to the employer or his agent by the Director of the Division of Occupational Safety and Health or his representative no later than the time of inspection, except that, upon the request of the person giving such notice, his name shall not appear in such copy or in any record published, released, or made available by the Arizona Division of Occupational Safety and Health.
- B. If upon receipt of such notification the Division Director determines that the complaint meets the requirements set forth in subsection (A) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

Historical Note

Adopted effective January 21, 1976 (Supp. 76-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-618 repealed,

former Section R4-13-617 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-618 effective March 2, 1981 (Supp. 81-2). R20-5-618 recodified from R4-13-618 (Supp. 95-1).

R20-5-619. Inspection Not Warranted; Informal Review

If the Division Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint in accordance with A.R.S. § 23-408(E), he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Industrial Commission and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Industrial Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Industrial Commission, at their discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Industrial Commission shall affirm, modify, or reverse the determination of the Division Director and furnish the complaining party and the employer a written notification of their decision and the reasons therefore. The decision of the Industrial Commission shall be final and not subject to further review. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of A.R.S. § 23-408(E).

Historical Note

Adopted effective May 25, 1977 (Supp. 77-3). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-619 repealed, former Section R4-13-618 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-619 effective March 2, 1981 (Supp. 81-2). R20-5-619 recodified from R4-13-619 (Supp. 95-1).

R20-5-620. Expired

Historical Note

Adopted effective May 25, 1977 (Supp. 77-3). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-620 repealed, former Section R4-13-619 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-620 effective March 2, 1981 (Supp. 81-2). R20-5-620 recodified from R4-13-620 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5062, effective September 30, 2003 (Supp. 03-4).

R20-5-621. Citations: Notices of De Minimis Violations

A. The Division Director shall review the inspection reports of the Compliance Safety and Health Officer. If, on the basis of the report, the Division Director believes that the employer has violated a requirement of A.R.S. § 23-403 of the Act, of any standard, rule or order promulgated pursuant to A.R.S. § 23-410 of the Act, or of any substantive rule published in these rules, he shall, if appropriate, consult with the Industrial Commission's counsel and shall issue to the employer either a citation or notice of de minimis violations. An appropriate citation or notice of de minimis violation shall be issued even though

after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

- B. If a citation or notice of de minimis violation issued for a violation alleged in a request for inspection under A.R.S. § 23-408(E), a copy of the citation or notice of de minimis violation shall also be sent to the employee or representative of employees who made such request or notification.
- C. After an inspection, if the Division Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under A.R.S. § 23-408(E), the informal review procedures prescribed in rule R20-5-619(A) shall be applicable. After considering all views presented, the Industrial Commission shall affirm the determination of the Division Director, order a reinspection, or issue a citation if the Industrial Commission believes that the inspection disclosed a violation. The Industrial Commission shall furnish the complaining party and the employer with a written notification of their determination and the reasons therefore. The determination of the Industrial Commission shall be final and not subject to review.
- D. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless a citation is affirmed by the Hearing Division or the Review Commission.

Historical Note

Adopted as an emergency effective May 24, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-3). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-620 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-621 effective March 2, 1981 (Supp. 81-2). R20-5-621 recodified from R4-13-621 (Supp. 95-1).

R20-5-622. Proposed Penalties

- A. All employers shall be notified of any proposed penalties, issued pursuant to A.R.S. § 23-418, by certified mail or by a signed verification in person.
- B. The Division Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations in accordance with the provisions of A.R.S. § 23-418 of the Act.
- C. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-621 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-622 effective March 2, 1981

(Supp.81-2). R20-5-622 recodified from R4-13-622 (Supp. 95-1).

R20-5-623. Posting of Citations

- A.** Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which the employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.
- B.** Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under A.R.S. § 23-471(A) shall not affect his posting responsibility under this rule unless and until the Hearing Division and/or Review Commission issues a final order vacating the citation.
- C.** An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Hearing Division and/or Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-622 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-623 effective March 2, 1981 (Supp. 81-2). R20-5-623 recodified from R4-13-623 (Supp. 95-1).

R20-5-624. Employer and Employee Contests before the Hearing Division

- A.** All notices to contest citations and/or penalties shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- B.** Any affected employee or employee representative appealing the period allowed an employer to abate a particular violation shall submit the notice of contest to the Division Director who shall immediately transmit such notice to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-623 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-624 effective March 2, 1981 (Supp. 81-2). R20-5-624 recodified from R4-13-624 (Supp. 95-1).

R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued

- A.** All employers failing to correct an alleged violation for which a citation has been issued, within the period permitted for its correction, shall be notified of such failure and any proposed penalties issued pursuant to A.R.S. § 23-418 by certified mail or by signed verification in person.
- B.** All notices to contest a notification of failure to correct a violation and of proposed additional penalty shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- C.** Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Industrial Commission and not subject to review by any court or agency unless within fifteen working days from the receipt of such notification, the employer notifies the Division Director in writing that he intends to contest the notification or the proposed additional penalty before the Hearing Division.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-624 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-625 effective March 2, 1981 (Supp. 81-2). R20-5-625 recodified from R4-13-625 (Supp. 95-1).

R20-5-626. Informal Conferences

At the request of an affected employer, employee, or representative of employees, the Industrial Commission, or their designee, may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to rules and procedures prescribed by the Industrial Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. Any party may be represented by counsel in such conference. No such conference or request for such conference shall operate as a stay of any fifteen working day period for filing a notice of intention to contest as prescribed in rule R20-5-624.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-625 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-626 effective March 2, 1981 (Supp. 81-2). R20-5-626 recodified from R4-13-626 (Supp. 95-1).

R20-5-627. Abatement Verification

- A.** Scope and application. This Section applies to employers, as defined in A.R.S. § 23-401, who receive a citation for a violation of the Arizona Occupational Safety and Health Act.
- B.** Definitions:
 1. Abatement means action by an employer to comply with a cited standard or rule or to eliminate a recognized hazard, as defined in A.R.S. § 23-401, identified by the Division during an inspection.
 2. Abatement date means:

- a. For an uncontested citation item, the later of:
 - i. The date in the citation for abatement of the violation;
 - ii. The date approved by the Division as a result of a petition for modification of the abatement date (PMA); or
 - iii. The date for abatement completion as established in a citation by an informal conference agreement.
 - b. For a contested citation item for which an administrative law judge has issued a final decision affirming the violation, the later of:
 - i. The date identified in the final decision for completion of abatement;
 - ii. The date computed by adding the original period allowed for abatement in the citation to begin 15 days from the final decision date of an administrative law judge; or
 - iii. The date established by a formal settlement agreement.
 - 3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.
 - 4. Final order date means:
 - a. The date on which an uncontested citation is deemed final under A.R.S. § 23-417 (A); or
 - b. For a contested citation item: The date on which a decision or order of an administrative law judge becomes final under A.R.S. § 23-421 or § 23-423.
 - 5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between workplaces.
- C. Abatement certification.
 - 1. Within 10 calendar days after the abatement date, an employer shall certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2). An employer may use Appendix A to certify abatement.
 - 2. An employer is not required to certify abatement if a Compliance Safety and Health Officer, during an onsite inspection:
 - a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and
 - b. Notes the abatement action on the citation.
 - 3. An employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by subsection (H), the completion date and method of abatement and a statement that affected employees and their representatives have been informed of the completed abatement.
- D. Abatement documentation.
 - 1. Within 10 days after the abatement date, an employer shall submit to the Division, documents which evidence that abatement is complete for each willful or repeat violation and for any serious violation for which abatement documentation is required.
 - 2. Documents which evidence that abatement is complete may include documents for purchase or repair of equipment, photographs or videos of the abatement, or other written records.
- E. Abatement plans.
 - 1. The Division may require an employer to submit an abatement plan, except for a nonserious violation, when the time permitted for abatement is more than 90 days. The citation shall state that an abatement plan is required. An employer may use Appendix B for an abatement plan.
- 2. An employer shall submit an abatement plan for each cited violation within 25 days from the date of a final order when the citation states that a plan is required. In the abatement plan, the employer shall identify:
 - a. The violation,
 - b. The steps necessary to achieve abatement,
 - c. A schedule for completing abatement, and
 - d. How the employer will protect employees from the violative condition until abatement is complete.
- F. Progress reports.
 - 1. The Division may require an employer who submits an abatement plan under subsection (E), to submit periodic progress reports for each cited violation. If the Division requires a periodic progress report, the citation shall include the following information:
 - a. Periodic progress reports are required and the cited violations for which periodic progress reports are required;
 - b. The date on which an initial progress report must be submitted. The date of the initial progress report shall be no sooner than 30 days after the submission date required for abatement;
 - c. Whether additional progress reports are required; and
 - d. The date on which additional progress reports shall be submitted.
 - 2. For each violation, the employer shall summarize in the progress report, the action taken to achieve abatement and the date the action was taken.
- G. Employee notification.
 - 1. An employer shall inform affected employees and the employees' representative of abatement activities covered by this Section by posting a copy of each document submitted to the Division or a summary of the document at the location of the cited violation.
 - 2. For employers who have mobile work operations, the employer shall:
 - a. Post each document or a summary of the document submitted to the Division in a conspicuous place where it can be readily seen by employees and the employee representative; or
 - b. Take other steps to communicate fully to affected employees and the employees' representative about abatement actions.
 - 3. The employer shall inform employees and the employees' representative of the right to examine and copy all abatement documents submitted by the employer to the Division.
 - a. An employee or an employee representative shall submit a written request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted to the Division.
 - b. An employer shall comply with an employee's or employee representative's written request to examine and copy abatement documents within five working days of receiving the request.
 - 4. An employer shall ensure that notice in subsection (G)(1) to employees and a employee representative is provided at the same time or before the information is provided to the Division and that abatement documents are:
 - a. Not altered, defaced, or physically covered by other material; and
 - b. Remain posted for at least three working days after submission to the Division.
- H. Transmitting abatement documents.

1. An employer shall include, in each submission required by this Section, the following information:
 - a. The employer's name and address;
 - b. The inspection number to which the submission relates;
 - c. The citation, item number, and location to which the submission relates;
 - d. A statement that the information submitted is accurate; and
 - e. The signature of the employer or the employer's authorized representative.
2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.

I. Movable equipment.

1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within or between workplaces. The Division shall deem attaching a copy of the citation to the equipment to meet the tagging requirement of subsection (I)(3) and the posting requirement of R20-5-623.
2. The employer shall use a warning tag to warn employees about the nature of the violation involving the movable equipment and identifies the location of the violation. An employer may use the tag in Appendix C to meet this requirement.
3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation to the equipment as follows:
 - a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation within eight hours after the employer receives the citation; and
 - b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation before moving the equipment within or between workplaces.
4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the requirements of this Section when the information required by subsection (I)(2) is included on the tag.
5. An employer shall ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or physically covered by other material.
6. An employer shall ensure that the tag or copy of the citation attached to movable equipment remains attached until:
 - a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
 - b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
 - c. The Division, administrative law judge, or Review Board vacates the citation.

Historical Note

Adopted effective June 26, 1998 (Supp. 98-2).

Appendix A. Sample Abatement - Certification Letter (Non-mandatory)

[Name], Director
The Industrial Commission of Arizona
Division of Occupational Safety and Health

P. O. Box 19070
Phoenix, Arizona 85005

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [Insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____.

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____.

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____.

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____.

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____.

I attest that the information contained in this document is accurate.

Signature _____

Typed or Printed Name _____

Historical Note

Appendix A adopted effective June 26, 1998 (Supp. 98-2).

Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)

(Name), Director
The Industrial Commission of Arizona
Division of Occupational Safety and Health
P. O. Box 19070
Phoenix, Arizona 85005

[Company's Name]
[Company's Address]

Check one:

Abatement Plan []

Progress Report []

Inspection Number _____

Page _____ of _____

Citation Number(s)* _____

Item Number(s)* _____

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1.		
2.		
3.		

-
.....
4.
-
-
-
5.
-
-

Date required for final abatement: _____

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone number: _____

*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

Historical Note

Appendix B adopted effective June 26, 1998 (Supp. 98-2).

Appendix C. Sample Warning Tag (Nonmandatory)

O

WARNING:

**EQUIPMENT HAZARD
BY ADOSH**

EQUIPMENT CITED:

HAZARD CITED:

**FOR DETAILED INFORMATION:
SEE ADOSH CITATION POSTED AT:**

BACKGROUND COLOR--ORANGE
MESSAGE COLOR--BLACK

Historical Note

Appendix C adopted effective June 26, 1998 (Supp. 98-2).

R20-5-628. Safe Transportation of Compressed Air or Other Gases

An employer shall not use Polyvinyl Chloride (PVC) piping in a place of employment for the transportation and distribution of compressed air or other compressed gases in an above-ground installation.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1161, effective March 11, 2003 (Supp. 03-1).

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

All employers, both public and private shall comply with the Occupational Injury and Illness Recording and Reporting Requirements, published in 29 CFR 1904, as amended June 30, 2003, incorporated by reference. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 874, effective February 19, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 318, effective January 1, 2004 (Supp. 03-4).

R20-5-630. Repealed

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-640 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-630 effective March 2, 1981 (Supp. 81-2). R20-5-630 recodified from R4-13-631 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-631. Repealed

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-631 recodified from R4-13-631 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-632. Repealed

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-632 recodified from R4-13-632 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-633. Repealed

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective Octo-

ber 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-633 recodified from R4-13-633 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-634. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-634 recodified from R4-13-634 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-635. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-635 recodified from R4-13-635 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-636. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted and amended effective March 2, 1981 (Supp. 81-2). R20-5-636 recodified from R4-13-636 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-637. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective December 14, 1994 (Supp. 94-4). R20-5-637 recodified from R4-13-637 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-638. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-638 recodified from R4-13-638 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-639. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-639 recodified from R4-13-639 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-640. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-641 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-640 effective March 2, 1981 (Supp. 81-2). R20-5-640 recodified from R4-13-640 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-641. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-642 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-641 effective March 2, 1981 (Supp. 81-2). R20-5-641 recodified from R4-13-641 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-642. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-643 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-642 effective March 2, 1981 (Supp. 81-2). R20-5-642 recodified from R4-13-642 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-643. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-644 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-643 effective March 2, 1981 (Supp. 81-2). R20-5-643 recodified from R4-13-643 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-644. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-645 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-644 effective March 2, 1981 (Supp. 81-2). R20-5-644 recodified from R4-13-644 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-645. Repealed**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-646 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-645 effective March 2, 1981 (Supp. 81-2). R20-5-645 recodified from R4-13-645 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

R20-5-646. Emergency Expired

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Emergency expired. R20-5-646 recodified from R4-13-646 (Supp. 95-1).

R20-5-647. Reserved

R20-5-648. Reserved

R20-5-649. Reserved

R20-5-650. Definitions

As used in rules R20-5-650 through R20-5-669 inclusive, unless the context clearly requires otherwise:

1. "Act" means the Arizona Occupational Safety and Health Act of 1972 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
2. "Commission" means the Industrial Commission of Arizona.
3. "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.
4. "Party" means a person admitted to participate in a hearing conducted in accordance with subsection (3). An applicant for relief and any affected employee shall be entitled to be named as parties.
5. "Affected employee" means an employee or any one of his authorized representatives, such as his collective bargaining agent, who would be affected by the granting or denial of a variance.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-651 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-650 effective March 2, 1981 (Supp. 81-2). R20-5-650 recodified from R4-13-650 (Supp. 95-1).

R20-5-651. Petitions for Amendments

Any person may at any time petition the Commission in writing to revise, amend, or revoke any provisions of rules R20-5-650 through R20-5-669 inclusive. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-652 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-651 effective March 2, 1981 (Supp. 81-2). R20-5-651 recodified from R4-13-651 (Supp. 95-1).

R20-5-652. Effects of Variances

All variances granted hereunder shall have only future effect. In their discretion, the Commission may decline to entertain an application for variance on the subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Federal Occupational Safety and Health Review Commission, State of Arizona Hearing Division or the Arizona Review Board until the completion of such proceeding.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-654 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-652 effective March 2, 1981 (Supp. 81-2). R20-5-652 recodified from R4-13-652 (Supp. 95-1).

R20-5-653. Public Notice of a Granted Variance

Every final action granting a variance, shall be published in state-wide newspapers. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-655 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-653 effective March 2, 1981 (Supp. 81-2). R20-5-653 recodified from R4-13-653 (Supp. 95-1).

R20-5-654. Form of Documents; Subscription; Copies

- A. No particular form is prescribed for applications and other papers which may be filed in proceedings hereunder. However, any applications and other papers shall be clearly legible. An original and six copies of any application and other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.
- B. Each application or other paper which is filed in proceedings hereunder shall be signed by the person filing the same or by his attorney or other authorized representative and where required by these regulations shall be verified by the applicant.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-646 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-654 effective March 2, 1981 (Supp. 81-2). R20-5-654 recodified from R4-13-654 (Supp. 95-1).

R20-5-655. Variances

- A. Application for variance. Any employer, or class of employers, desiring a variance from a standard or regulation or any portion thereof, authorized by A.R.S. § 23-411 of the Act may file a written application containing the information specified in subsection (B) of this Section with the Industrial Commission of Arizona, 1601 West Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-411(B) and (C) of the Act.
- C. Interim order.
 1. Application. In accordance with A.R.S. § 23-411(B)(3) of the Act, an application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
 2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.

3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-657 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-655 effective March 2, 1981 (Supp. 81-2). R20-5-655 recodified from R4-13-655 (Supp. 95-1).

R20-5-656. Variances under A.R.S. § 23-412

- A. Application for variance. Any employer, or class of employers, desiring a variance authorized by A.R.S. § 23-412 of the Act may file a written application containing the information specified in subsection (B) of this Section, with the Industrial Commission of Arizona, 1601 W. Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-412 of the Act.
- C. Interim order
 1. Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
 2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
 3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-658 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-656 effective March 2, 1981 (Supp. 81-2). R20-5-656 recodified from R4-13-656 (Supp. 95-1).

R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances

- A. Renewal or rules or orders. Any final rule or order issued under A.R.S. § 23-411 of the Act may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.
- B. Multi-state variances. Where a federal variance has been granted with multi-state applicability, including applicability in this state operating under a state plan approved under Sec-

tion 18 of the Act, from a standard or portion thereof identical to this state's standard or regulation or portion thereof such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard or portion thereof provided no objections of substance are found to be interposed by the Commission.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-659 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-657 effective March 2, 1981 (Supp. 81-2). R20-5-657 recodified from R4-13-657 (Supp. 95-1).

R20-5-658. Action on Applications

- A. Defective applications
 1. If an application filed pursuant to rule R20-5-655, R20-5-656, R20-5-657 and R20-5-658 does not conform to the applicable Section, the Commission may deny the application.
 2. Prompt notice of the denial of an application shall be given to the applicant.
 3. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.
 4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.
- B. Adequate applications
 1. If an application has not been denied pursuant to subsection (A) of this Section, the Commission shall cause to be published in statewide newspapers a notice of the filing of the application.
 2. A notice of the filing of an application shall include:
 - a. The terms, or an accurate summary, of the application;
 - b. A reference to the Section of the Act under which the application has been filed;
 - c. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
 - d. Information to affected employers, employees, of any right to request a hearing on the application.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-660 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-658 effective March 2, 1981 (Supp. 81-2). R20-5-658 recodified from R4-13-658 (Supp. 95-1).

R20-5-659. Request for Hearings on Petition

- A. Request for hearing. Any employer, employee, authorized employee representative, representative, or other person interested in or affected by an order of the Commission may petition for a hearing on the reasonableness and lawfulness of an order issued under A.R.S. §§ 23-411 or 23-412, by a verified petition filed with the Commission.
- B. Contents of a petition. A request for a hearing filed pursuant to subsection (A) of this Section shall include:
 1. The name and address of the applicant;
 2. A concise statement of facts showing how the employer, employee, authorized employee representative, representative, or other person would be affected by the relief applied for;

3. A petition shall set forth specifically and in detail the order upon which a hearing is desired;
4. The reasons why the order is unreasonable or unlawful;
5. The issue to be considered by the Commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.
6. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
 - a. Giving a copy thereof to their authorized representative;
 - b. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the petition specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting the application itself); and
 - c. Other appropriate means.
7. If the applicant is an affected employee, a certification that a copy of the petition has been furnished to the employer.

C. The Commission may on its own motion proceed to modify or revoke a rule or order issued under A.R.S. §§ 23-411 or 23-412 of the Act. In such event, the Commission shall cause to be published in statewide newspapers a notice of its intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing and shall take such other action as may be appropriate to give actual notice to the affected employees. Any request for a hearing shall include a short and plain statement of:

1. How the proposed modification or revocation would affect the requesting party; and
2. What the requesting party would seek to show on the subjects or issues involved.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-661 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-659 effective March 2, 1981 (Supp. 81-2). R20-5-659 recodified from R4-13-659 (Supp. 95-1).

R20-5-660. Consolidation of Proceedings

The Commission on its own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-662 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-660 effective March 2, 1981 (Supp. 81-2). R20-5-660 recodified from R4-13-660 (Supp. 95-1).

R20-5-661. Notice of Hearing

- A. Service. Upon request for a hearing as provided in this Section, or upon its own initiative, the Commission shall serve, or cause to be served, a reasonable notice of hearing.
- B. Contents. A notice of hearing served under subsection (A) of this Section shall include:
 1. The time, place, and nature of the hearing;
 2. The legal authority under which the hearing is to be held;
 3. A specification of issues of fact and law.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-663 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-661 effective March 2, 1981 (Supp. 81-2). R20-5-661 recodified from R4-13-661 (Supp. 95-1).

R20-5-662. Manner of Service

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-664 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-662 effective March 2, 1981 (Supp. 81-2). R20-5-662 recodified from R4-13-662 (Supp. 95-1).

R20-5-663. Industrial Commission; Powers and Duties

- A. Powers. The Commissioners shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:
 1. To administer oaths and affirmations;
 2. To rule upon offers of proof and receive relevant evidence;
 3. To provide for discovery and to determine its scope;
 4. To regulate the course of the hearing and the conduct of the parties and their counsel therein;
 5. To consider and rule upon procedural requests;
 6. To hold conferences for the settlement or simplification of the issues by consent of the parties;
 7. To make, or to cause to be made, an inspection of the employment or place of employment involved;
 8. To make decisions in accordance with A.R.S. §§ 23-405.5, 23-411, 23-412, and 23-945; and
 9. To take any other appropriate action authorized by the Act, this Section, or A.R.S. § 23-945.
- B. Contumacious conduct; failure or refusal to appear or obey the rulings of the Commission.
 1. Contumacious conduct at any hearing before the Commission shall be grounds for exclusion from the hearing.
 2. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order denying an application of an applicant or regulating the contents of the record of the hearing.
- C. Referral to Rules of Procedure for Occupational Safety and Health hearings. On any procedural question not regulated by this Section, the Act, or A.R.S. § 23-945, Commission shall be guided to the extent practicable by any pertinent provisions of the Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-665 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-663 effective March 2, 1981 (Supp. 81-2).

(Supp. 81-2). R20-5-663 recodified from R4-13-663 (Supp. 95-1).

R20-5-664. Prehearing Conferences

- A.** Convening a conference. Upon its own motion or the motion of a party, the Commission may direct the parties or their counsel to meet with them for a conference to consider:
1. Simplification of the issues;
 2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
 3. Stipulations, admissions of fact, and of contents and authenticity of documents;
 4. Limitation of the number of parties and of expert witnesses; and
 5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.
- B.** Record of conference. The Commission shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearings to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-666 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-664 effective March 2, 1981 (Supp. 81-2). R20-5-664 recodified from R4-13-664 (Supp. 95-1).

R20-5-665. Consent Findings and Rules or Orders

- A.** General. At any time before the reception of evidence in any hearing, or during any hearing, a reasonable opportunity may be afforded to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Commission. After consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.
- B.** Contents. Any agreement containing consent findings in rule or other disposing of a proceeding shall also provide:
1. That the rule or order shall have the same force and effect as if made after a full hearing;
 2. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
 3. A waiver of any further procedural steps before the Commission; and
 4. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.
- C.** Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:
1. Submit the proposed agreement to the Commission for its consideration; or
 2. Inform the Commission that agreement cannot be reached.
- D.** In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the

Commission may accept such agreement by issuing its decision based upon the agreed findings.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-667 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-665 effective March 2, 1981 (Supp. 81-2). R20-5-665 recodified from R4-13-665 (Supp. 95-1).

R20-5-666. Discovery

- A.** Depositions
1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the Commission and having power to administer oaths.
 2. Application. Any party desiring to take the deposition of a witness may make application in writing to the Commission, setting forth:
 - a. The reasons why such deposition should be taken;
 - b. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
 - c. The name and address of each witness; and
 - d. The subject matter concerning which each witness is expected to testify.
 3. Notice. Such notice as the Commission may order shall be given by the party taking the deposition to every other party.
 4. Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of the hearing.
- B.** Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the Commission may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-668 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-666 effective March 2, 1981 (Supp. 81-2). R20-5-666 recodified from R4-13-666 (Supp. 95-1).

R20-5-667. Hearings

- A. Order of proceeding. Except as may be ordered otherwise by the Commission, the party applicant for relief shall proceed first at a hearing.
- B. Burden of proof. The party applicant shall have the burden of proof.
- C. Evidence
 - 1. Admissibility. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Commission shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
 - 2. Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the Commission.
- D. Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: provided that the parties shall be given adequate notice, at the hearing or by reference in the Commission's decision, of the matters so noticed and shall be given adequate opportunity to show the contrary.
- E. Record. Minutes shall be taken of the Commission hearings. Copies of the minutes may be obtained by the parties upon written application filed with the secretary of the Commission and upon the payment of fees at the rate provided in the agreement with the Commission.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-669 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-667 effective March 2, 1981 (Supp. 81-2). R20-5-667 recodified from R4-13-667 (Supp. 95-1).

R20-5-668. Decisions of the Commission

- A. Proposed findings of fact, conclusions, and rules or orders. Within 10 days after completion of the hearing or such additional time as the Commission may allow, each party may file with the Commission proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
- B. Decisions of the Commission. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the Commission shall make and serve upon each party its decision, which shall become final upon the 30th day after service thereof, unless exceptions are filed thereto, as provided in rule R20-5-669. The decision of the Commission shall include:
 - 1. A statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record, and
 - 2. The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially notice and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days

(Supp. 80-5). Former Section R4-13-670 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-668 effective March 2, 1981 (Supp. 81-2). R20-5-668 recodified from R4-13-668 (Supp. 95-1).

R20-5-669. Judicial Review

Any employer, employee, authorized employee representative, representative, or any person in interest is dissatisfied with an order of the Commission may appeal in accordance with A.R.S. § 23-413 of the Act.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-674 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-670 effective March 2, 1980 (Supp. 81-2). R20-5-669 recodified from R4-13-669 (Supp. 95-1).

R20-5-670. Field Sanitation

- A. This Section applies to any agricultural establishment where a crew of five or more employees are engaged on any given day in hand-labor operations in one location.
- B. As used in this Section:
 - 1. "Agricultural establishment" means a business operation that uses paid employees in the production of food, fiber or other material such as seed, seedlings, plants or parts of plants.
 - 2. "Crew of employees" means a group of persons who are employed to perform hand-labor operations as a unit at an agricultural establishment. "Crew of employees" does not include the employer and the employer's immediate family members.
 - 3. "Hand-labor operations" means agricultural activities or operations performed in the field by hand or with hand tools. Hand-labor operations include the hand-harvest of vegetables, nuts and fruits, hand-weeding of crops and hand-planting of seedlings. Hand-labor operations do not include such activities as logging operations, irrigation operations, the care or feeding of livestock or hand-labor operations in permanent structure, such as canning facilities or packing houses. Hand-labor operations do not include activities in which persons are acting as equipment operators.
 - 4. "Handwashing facility" means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single-use towels.
 - 5. "Potable water" means water that meets the standards for drinking purposes prescribed by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141 (July 1983), incorporated by reference and on file in the Office of the Secretary of State.
 - 6. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets or sanitary privies, which is supplied with toilet paper adequate for employee needs. Toilet facilities may be either fixed or portable.
- C. Employers shall provide the following for employees engaged in hand-labor operations at an agricultural establishment without cost to the employee:
 - 1. Potable drinking water as follows:
 - a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.

- b. The water shall be suitably cool, no more than 80°F, and in sufficient amounts, a minimum of two gallons per employee, taking into account the air temperature, humidity and the nature of the work performed, to meet employees' need.
 - c. The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.
- 2. Toilet and handwashing facilities as follows:
 - a. One toilet facility and one handwashing facility shall be provided for each 40 employees or fraction thereof, except as provided in subsection (D) of this Section.
 - b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to ensure privacy.
 - c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other and within 1/4 mile of each employee's place of work in the field. If it is not feasible to locate facilities accessibly and within the required distance due to the terrain, facilities shall be located at the point of closest vehicular access.
- D. Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.
- E. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including all of the following:
 - 1. Drinking water containers shall be covered, cleaned and refilled daily.
 - 2. Toilet facilities shall be operational and maintained in clean and sanitary condition and shall be supplied with toilet paper adequate for employee needs.
 - 3. Handwashing facilities shall be maintained in clean and sanitary condition.
 - 4. Disposal of wastes from facilities shall not cause unsanitary conditions.
- F. Employees shall be allowed reasonable opportunities during the workday to use the facilities.

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Adopted effective May 2, 1986 (Supp. 86-3). R20-5-670 recodified from R4-13-670 (Supp. 95-1).

R20-5-671. Reserved

R20-5-672. Reserved

R20-5-673. Reserved

R20-5-674. Emergency expired

Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Emergency expired. R20-5-674 recodified from R4-13-674 (Supp. 95-1).

R20-5-675. Reserved

R20-5-676. Reserved

R20-5-677. Reserved

R20-5-678. Reserved

R20-5-679. Reserved

R20-5-680. Protected Activity

- A. All complaints pursuant to A.R.S. § 23-425 shall relate to conditions at the workplace. The filing of complaints need not be in writing for purposes of this subsection except that those complaints filed pursuant to R20-5-682 shall comply with R20-5-682. The term "filed any complaint" as used in A.R.S. § 23-425(A) includes:
 - 1. Employee requests for inspection pursuant to A.R.S. § 23-408(F);
 - 2. Complaints registered with other state, local or federal governmental agencies which have the authority to regulate or investigate occupational safety and health conditions;
 - 3. Complaints lodged with employers; or
 - 4. Complaints filed as specified in R20-5-682.
- B. The term "instituted or caused to be instituted any proceeding" as used in A.R.S. § 23-425(A) includes:
 - 1. Inspections of worksites under A.R.S. § 23-408(A);
 - 2. Employee contest of abatement date under A.R.S. § 23-417(D);
 - 3. Employee initiation of proceedings for promulgation of an occupational safety and health standard under A.R.S. § 23-410(A);
 - 4. Employee application for modification or revocation of a variance under A.R.S. § 23-413;
 - 5. Employee judicial challenge to a standard under A.R.S. § 23-410(E);
 - 6. Employee appeal of an Administrative Law Judge Division order under A.R.S. § 23-421(C);
 - 7. Exercise of rights by any employee pursuant to A.R.S. § 23-418.01;
 - 8. Any other employee action authorized by the Arizona Occupational Safety and Health Act of 1972; or
 - 9. Setting into motion the activities of others which result in the proceedings specified in subsections (B)(1) through (8).
- C. The term "testified or is about to testify in any such proceeding" as used in A.R.S. § 23-425(A) includes:
 - 1. Testimony in proceedings instituted or caused to be instituted by the employee; or
 - 2. Any statements given in the course of judicial, quasi-judicial or administrative proceedings. For this purpose, administrative proceedings include inspections, investigations and administrative rulemaking or adjudicative functions.
- D. The term "the exercise by such employee on behalf of himself or others of any right afforded by this Article" as used in A.R.S. § 23-425(A) includes:
 - 1. The right to participate as a party in enforcement proceedings pursuant to A.R.S. § 23-408(D);
 - 2. The right to request information from the Industrial Commission; or
 - 3. To cooperate with inspections or investigations by the Industrial Commission.
- E. If the employee, with no reasonable alternative, refuses in good faith to expose himself to a dangerous condition, the employee is engaged in protected activity. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the dangers through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his

employer and been unable to obtain a correction of the dangerous condition.

- F. Employees who refuse to comply with valid occupational safety and health standards or valid safety rules implemented by the employer are not protected by A.R.S. § 23-425.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-680
recodified from R4-13-680 (Supp. 95-1).

R20-5-681. Elements of a Violation of A.R.S. § 23-425

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:

1. The employee was engaged in protected activities as defined in R20-5-680.
2. The employer had knowledge of the employee's protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. The protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-681
recodified from R4-13-681 (Supp. 95-1).

R20-5-682. Procedure

- A. A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408(F) to do so on the employee's behalf. The complaint shall be written and shall be signed by the person filing the complaint.
- B. The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division.
- C. The Division may accept or deny an employee's withdrawal of a complaint. The Industrial Commission's investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.
- D. The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.
- E. The Industrial Commission's jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:
1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23-425;
 2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
 3. The proceedings were fair and regular; and
 4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F. A determination pursuant to A.R.S. § 23-425(C) includes:
1. A decision to not proceed with the case;
 2. To defer the case to another forum; or
 3. To proceed to litigation in Superior Court.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-682
recodified from R4-13-682 (Supp. 95-1).

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

R20-5-701. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Administrator" means an individual or organization chosen by a board to manage the daily operations of a pool.

"Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.

"Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.

"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

"Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.

"Claim" means a worker compensation claim.

"Code classification" means a number assigned by an approved rating organization that classifies employees.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

“Rate” means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

“Rating organization” means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Service company” means an entity or organization that is contracted by a pool to receive, process, and pay workers’ compensation claims for a pool.

“Trustee fund” means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-702. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-insure:
 - a. Name of the pool;
 - b. Address and telephone number of the pool’s principal office;
 - c. Effective date of formation of the pool;
 - d. Name and address of each member of the pool;
 - e. Two digit standard industrial classification code for each member of the pool;
 - f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;
 - g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;
 - h. Type of business in which members are engaged and length of time in business for each member;
 - i. Explanation of how businesses of members are the same or similar;
 - j. Amount of workers’ compensation insurance premiums paid by each member in the preceding year;

- k. Names and addresses of the board of trustees;
 - l. Name, address, and telephone number of the administrator appointed by the board of trustees;
 - m. Name, address, and telephone number of the service company, if applicable;
 - n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
 - o. Premium tax plan selection;
 - p. Authorized signature and title of person signing initial application;
 - q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 - r. Date of execution of the initial application.
2. Renewal Application:
 - a. Name of the pool;
 - b. Address and telephone number of the pool’s principal office;
 - c. Name and address of each member of the pool and the effective date of membership;
 - d. Renewal date of the pool;
 - e. Effective date of initial authority to self-insure;
 - f. Total number of member employees covered by the pool;
 - g. Total payroll of the pool for the last fiscal year;
 - h. Name, address, and telephone number of the administrator;
 - i. Name, address, and telephone number of the service company, if applicable;
 - j. Name, address, and telephone number of the excess insurance carrier;
 - k. Name and address of the companies providing guaranty bond and fidelity policy;
 - l. Name and address of individuals serving on the board of trustees;
 - m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;
 - n. Authorized signature and title of person signing renewal application;
 - o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
 - p. Date of execution of the renewal application.
3. Self-Insurance Guaranty Bond Form:
 - a. Pool identification;
 - b. Names of fidelity and surety insurance companies;
 - c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
 - d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
 - e. Authorized signatures and titles by pool, surety, and agent; and
 - f. Date of execution of the guaranty bond form.
4. Option Election Form:
 - a. Calculation and selection of type of guaranty bond and securities;
 - b. Description of incurred liability and anticipated future liability (compensation and medical) on all

- open cases for the preceding four years and the current year;
- c. Authorized signature and title of person signing option election form;
- d. Statement that all information and assertions contained in the form are factually correct and true; and
- e. Date of execution of the option election form.
- 5. Self-insured Payroll Report:
 - a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);
 - b. Amount paid in the preceding calendar year;
 - c. Authorized signature and title of person signing self-insured payroll report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of self-insured payroll report.
- 6. Self-insured Medical Report:
 - a. Description of costs relating to industrial injuries;
 - b. Reinsurance premiums paid;
 - c. Total expenditures for workers' compensation and occupational disease claims;
 - d. Authorized signature and title of person signing self-insured medical report;
 - e. Statement that all information and assertions contained in the report are factually correct and true; and
 - f. Date of execution of the self-insured medical report.
- 7. Self-insured Injury Report:
 - a. Description of specific information for the current year and three preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;
 - b. Description of all injuries for the current year and three preceding years if individual injury required payment of less than \$5,000;
 - c. Authorized signature, title, and telephone number of person signing self-insured injury report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of the self-insured injury report.
- 8. Quarterly Tax Payment Form:
 - a. Name and address of the pool;
 - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
 - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
 - d. Description and calculation of any penalty due;
 - e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;
 - f. Statement that all information and assertions contained in the form are factually correct and true; and
 - g. Date of execution of the quarterly tax payment form.
- 9. Application to Add a Member to Self-insured Pool:
 - a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
 - b. Nature and years in business of the member to be added;
 - c. History of business in Arizona and elsewhere for the member to be added;
 - d. Payroll data for each member to be added;
 - e. Work force data for each member to be added;
 - f. Financial data for each member to be added;
 - g. Insurance data for each member to be added;
 - h. Two digit standard industrial classification code for each member of the pool;
 - i. Workers' compensation claims, loss and performance history for the member to be added;
 - j. Authorization by board resolution approving addition of each new member;
 - k. Authorized signature and title of person signing application;
 - l. Statement that all information and assertions contained in the application are factually correct and true; and
 - m. Date of execution of the application.
- 10. Notice Confirming Addition of Member to Pool:
 - a. Name of the pool;
 - b. Name and address of the new member;
 - c. Effective date of membership;
 - d. Rate and code classification to be applied to new member;
 - e. Standard industrial classification code for new member;
 - f. Authorized signature and title of person signing notice;
 - g. Statement that all information and assertions contained in the notice are factually correct and true; and
 - h. Date of execution of the notice.
- 11. Notice of Termination of Membership:
 - a. Name and address of pool;
 - b. Effective date of termination;
 - c. Name and address of the member to be terminated, identified as follows:
 - i. All names and addresses of every location used by the member;
 - ii. If the member is a partnership, the names and addresses of all the partners;
 - iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
 - iv. If a member changes names, both the new and former names.
 - d. Authorized signature, title and telephone number of person signing notice;
 - e. Statement that all information and assertions contained in the notice are factually correct and true; and
 - f. Date of execution of the notice.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-704. Requirement for Commission Approval to Act as Self-insurer

A pool does not have authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-705. Duration of Certificate of Authority

Except as provided in this subsection, a certificate of authority is valid for one fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission

shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-insure

A. Administrative completeness review.

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.

B. Substantive review.

1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License

A. Initial application for authorization to self-insure.

1. An application for authority to self-insure shall be completed on forms approved by the Commission.
 2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
 3. An application shall be typewritten or written in ink in legible text.
 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.
 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- B.** The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:
1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
 2. A copy of the articles of incorporation establishing the pool, if applicable;
 3. A copy of the trust agreement establishing the pool, if applicable;
 4. A copy of the by-laws governing the operations of the pool;
 5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
 6. A resolution from the board approving employers for membership in the pool;
 7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior two years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
 8. A copy of the following financial ratios for each employer applying for membership in the pool:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and
 - f. Working capital ratio.
 9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
 10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
 11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
 12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
 - a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall

- be deposited with the Industrial Commission before approval for self-insurance is effective,
 - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective, or
 - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall be deposited with the Arizona State Treasurer before approval for self-insurance is effective.
13. A completed and signed Option Election Form and Self-Insurance Bond Form;
 14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
 15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
 16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 17. A list of all rates by code classification to be used by the pool to calculate premiums;
 18. A statement showing how premiums shall be calculated for members;
 19. A detailed description of the underwriting program required under R20-5-727;
 20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and
 21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modification rates for the three preceding years for each employer applying for membership in the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

- A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.
- B. A renewal application shall meet the following requirements:
 1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
 2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;

3. An application shall be typewritten or written in ink in legible text;
 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- C. A self-insured pool shall provide the following information at the time the pool files a renewal application:
 1. An updated, completed and signed Option Election Form;
 2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth in the updated Option Election Form and that meets the requirements of R20-5-713;
 3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
 4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
 6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
 7. A statement of any change in the calculation method of a premium for each member;
 8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
 9. A copy of the current contract or agreement of hire between the pool and administrator; and
 10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).
 - D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most recent audited annual financial statements and a copy of the pool's most recent actuarial review of:
 1. Losses and reserves for all known claims, and
 2. Reserves for incurred but not reported claims.
 - E. The Commission shall deem a renewal application complete when a pool provides the information required under subsections (C) and (D).
 - F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.
 - G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether two or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two digit standard industrial classification code established by the 1987 Standard Industrial Classification Manual assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether two or more employers are engaged in a similar industry.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-711. Joint and Several Liability of Members

A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:

1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
 2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.
- B. The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (2).
- C. The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).

- E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-712. Fidelity Policy

- A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
1. Individuals appointed to the pool's board of trustees (individual and collective liability),
 2. Administrator of the pool, and
 3. Employees of the pool.
- B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator, or employees of the pool.
- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:
1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or
 2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of one year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continuation certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.
- E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).
- F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).
- G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-714. Securities Deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.
- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
 - 1. To collect or order the collection of the securities as they become due;
 - 2. To sell or order the sale of the securities, or any part of the securities; and
 - 3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.
- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

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 exceed \$250,000. Specific excess insurance shall be provided to the statutory limit; and
 - b. Maximum retention of aggregate excess insurance shall not exceed 110% of collected premiums. Total aggregate insurance coverage shall not be less than \$5,000,000.
 - 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.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-716. Rates and Code Classifications; Penalty Rate

- A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.
- B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:
 - 1. The rating plan is filed by an Arizona licensed rating organization, and
 - 2. The rating plan has not been disapproved by the Arizona Department of Insurance.
- C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than five days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.
- D. Deviations from rates.
 - 1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
 - a. The deviation is based upon the expense and loss experience of the pool,
 - b. The deviation is supported and justified by an actuary's feasibility study, and
 - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
 - 2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.
- E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:
 - 1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
 - 2. Total assets of a pool are greater than total liabilities for each fiscal year;
 - 3. An actuary approves the amount of the refund;
 - 4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
 - 5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-718. Financial Statements

- A.** A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.
- B.** A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C.** A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D.** A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:
 - 1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
 - 2. A description of how the pool operates; and
 - 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E.** Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-719. Board of Trustees

- A.** A pool shall be managed by a board of trustees consisting of at least five individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B.** Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
 - 1. Responsibility for all operations of a pool;
 - 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
 - 3. Hiring of an administrator to manage the daily operations of a pool;
 - 4. Reviewing and taking action on applications for membership in a pool;
 - 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
 - 6. Determining the premium to be charged to a member;
 - 7. Investing surplus monies in compliance with this Article and other applicable law;
 - 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
 - 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
 - 10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
 - 11. Ensuring that accounts and records of the pool are audited as required under this Article.

- C.** Delegation of board duties to administrator.
 - 1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
 - 2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.
- D.** Board prohibitions. A board or board trustee shall not commit or perform the following acts:
 - 1. Extend credit to members for payment of a premium;
 - 2. Utilize money collected as premiums for a purpose unauthorized by this Article;
 - 3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
 - 4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

- A.** An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B.** An administrator shall not commit any of the acts described in R20-5-719(D).
- C.** An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

- A.** An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.
- B.** Consideration of application by a board.
 - 1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.
 - 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C.** Commission Approval.
 - 1. Except as provided in subsection (C)(2), within seven days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall

consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:

- a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;
- b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
- c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

2. After a pool has completed one year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:

- a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
- b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.

3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.

D. Admission of an employer under subsection (C)(2).

1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.
2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

- A.** A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.
- B.** A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days before

the termination or cancellation is effective on a form approved by the Commission.

- C.** A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-723. Trustee Fund; Loss Fund

- A.** A pool shall maintain a trustee fund and a loss fund.

B. Trustee fund.

1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.
2. A pool shall create a loss fund from the trustee fund.
3. A pool shall pay administrative expenses of the pool from the trustee fund.
4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

C. Loss fund.

1. A pool shall place its loss fund in a designated federally insured depository in Arizona.
2. A pool shall pay all workers' compensation expenses from the loss fund.
3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-724. Investment Activity of a Pool

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
 - a. United States Government bonds;
 - b. United States Treasury notes;
 - c. Municipal and corporate bonds described under subsections (A)(2), (3), and (4);
 - d. Certificates of deposit;
 - e. Savings accounts in banks located in Arizona that are federally insured; and
 - f. Common or preferred stock.
2. Corporate and municipal bonds are restricted to the top three major investment grades as determined by two financial rating services;
3. Not more than 5% of a corporate municipal bond portfolio is invested in any one corporation or municipality;
4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;
5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and
6. Not more than 5% of a common and preferred stock portfolio is invested in any one corporation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

- A.** A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool

obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.

B. Qualifications of a service company.

1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;
2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Worker's Compensation Act;
3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.

C. A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and the rules. A contract between a pool and service company shall include this requirement.

D. Transfer of claims from one service company to another service company.

1. The transfer of claims from one service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.
2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from one service company to another.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-726. Processing of Workers' Compensation Claims by a Pool

A. The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:

1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;
2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Workers' Compensation Act;
3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.

B. A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-727. Loss Control and Underwriting Programs

- A.** A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B.** A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.
- C.** A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.
- D.** A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.
- E.** A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

A. A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding. The proposal may include the following:

1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or
3. Assessment of members.

B. The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within one year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.

C. If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.

D. The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.

E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.

F. A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- A. A pool shall maintain an office in Arizona.
- B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.
- D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.
- E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a third party, the third party shall immediately surrender the records to a pool, upon request by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065

- A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using one of the following insurance plans selected by a pool:
 - 1. Fixed premium plan:
 - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
 - b. A discount is allowed for premium size; and
 - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
 - 2. Guaranteed cost plan:
 - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
 - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.

3. Retrospective plan:

- a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
- b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
- c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
- d. The net taxable premium is subject to a maximum and minimum premium level depending on which one of the four rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;

B. A pool shall not select a retrospective plan unless the pool meets the following criteria:

- 1. The pool has an annual net taxable premium exceeding \$100,000; and
- 2. The pool submits and calculates four years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest three years of data is used to calculate the rate and the current year data is used to calculate the tax.

C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:

- 1. Self-insured Payroll Report, and
- 2. Self-insured Injury Report.

D. Payment of quarterly tax.

- 1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in one of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate; or
 - b. Calculation based on actual payroll and premiums collected for each quarter.
- 2. A pool shall file a completed and signed Self-insurers' Quarterly Tax Payment Form with each quarterly tax payment.
- 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
- 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.

E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.

- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

- A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:
1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
 2. Whether the pool has met the requirements of this Article; and
 3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and
 - b. Total revenue to total expenditures for loss fund and trustee fund.
- B. The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- A. The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
1. The information submitted by an applicant or pool,
 2. The information and recommendations of the Division, and
 3. The requirements of A.R.S. § 23-961.01 and this Article.
- B. The Commission shall deny an application for authority to self-insure if the Commission finds one or more of the following conditions:
1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01,
 2. An applicant or pool does not meet the requirements of this Article, or
 3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.
- D. The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this

Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.

- F. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.
- G. In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter or credit, or other securities as required under this subsection.
- H. Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-735. Right to Request a Hearing

- A. An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.
- B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-736. Hearing Rights and Procedures

- A. Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B. Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise

provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.

2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C. Appearance by a party.
 1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.
 1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.
 1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.
 1. The civil rules of evidence do not apply to hearings held under this Section.
 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
 3. All witnesses at a hearing shall testify under oath or affirmation.
 4. A party may present evidence and conduct cross-examination of witnesses.
 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be

requested no later than 10 days before the date of the hearing.

7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.
- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-737. Decision Upon Hearing by Commission

- A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E. A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-738. Request for Review

- A. A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.

- C. A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-739. Revocation of Authority to Self-insure

- A. In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
 - 1. Failure to comply with requirements of this Article or applicable requirements of 20 A.A.C. 5, Article 1;
 - 2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
 - 3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
 - 4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
 - 5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
 - 6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.
- B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.
- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.
- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH
RULES OF PROCEDURE BEFORE THE INDUSTRIAL
COMMISSION OF ARIZONA**

R20-5-801. Notice of Rules

Sections R20-5-801 et seq. apply to all actions and proceedings of or before the Commission and Review Board pertaining to those issues arising out of Title 23, Chapter 2, Article 10.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-801 recodified from R4-13-801 (Supp. 95-1).

R20-5-802. Location of Office and Office Hours

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 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-802 recodified from R4-13-802 (Supp. 95-1).

R20-5-803. Definitions

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

1. "Commission" means the Industrial Commission of Arizona.
2. "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.
3. "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
4. "Representative" means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.
5. "Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
6. "Notification of proposed penalty" means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.
7. "Party" means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-803 recodified from R4-13-803 (Supp. 95-1).

R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-804 recodified from R4-13-804 (Supp. 95-1).

R20-5-805. Record Address

The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the Commission and to all other parties. A party who fails to furnish such correct and current information shall be deemed to have waived his right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-805 recodified from R4-13-805 (Supp. 95-1).

R20-5-806. Service and Notice

- A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.

- B. Service upon a party who has appeared through a representative shall be made only upon such representative.
- C. Unless otherwise herein indicated, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).
- D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (C).
- F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of Notice of the Date of Hearing, post, where the citation is required to be posted, a copy of the Notice of Date of Hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:

(Name of employer)

Your employer has been cited by the Industrial Commission of Arizona for violation of the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Industrial Commission. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission in its Rules of Procedure. Notice of Intent to Participate should be sent to:

THE INDUSTRIAL COMMISSION
OF ARIZONA
1601 West Jefferson Street,
Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above Notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Industrial Commission for abatement of the violation has been contested and will be the subject of a hearing before the Industrial Commission.

- G. Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.
- H. The authorized employee representative, if any, shall be served with the notice set forth in subsection (G) and with a copy of the Notice of the Date of Hearing.
- I. A copy of the Notice of the Date of Hearing shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the Notice of such hearing at or near the place where the citation is required to be posted.
- J. A copy of the Notice of the Date of Hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subsection (C) of this Section, if the employer has not been informed that the

authorized employee representative has entered an appearance as of the date such Notice is received by the employer.

- K. Where a petition for hearing is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the Notice of the Date of Hearing, serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (C) of this Section and shall file proof of such service.
- L. Where a Petition for Hearing is filed by an affected employee or an authorized employee representative, a copy of the Petition for Hearing shall be provided to the employer for posting by the employer at the place the citation is required to be posted.
- M. An authorized employee representative who files a Notice of Contest shall be responsible for serving any other authorized employee representative whose members are affected employees.
- N. Where posting is required by this Section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-806 recodified from R4-13-806 (Supp. 95-1).

R20-5-807. Consolidation

Cases may be consolidated on the motion of any party, or on the hearing officer's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-807 recodified from R4-13-807 (Supp. 95-1).

R20-5-808. Severance

Upon its own motion, or upon motion of any party, the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-808 recodified from R4-13-808 (Supp. 95-1).

R20-5-809. Election to Appear

- A. Affected employees may elect to appear at a hearing for the purpose of testifying or stating their position concerning the subject matter of the hearing.
- B. If affected employees desire to appear at the hearing they must so notify in writing the Commission or the hearing officer, if the case has been assigned.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-809 recodified from R4-13-809 (Supp. 95-1).

R20-5-810. Employee Representatives

- A. Employees may appear in person or through a representative.
- B. An authorized employee representative shall be deemed to control all matters respecting the interest of such employees in the proceeding.
- C. Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.
- D. Withdrawal of appearance of any representative may be effected by filing a written Notice of Withdrawal and by serving a copy thereof on all parties.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-810 recodified from R4-13-810 (Supp. 95-1).

R20-5-811. Form of Pleadings

- A. Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with R20-5-812, which shall include the Commission's citation number, and a clear and plain statement of the relief that is sought, together with the grounds therefor.
- B. Pleadings and other documents (other than exhibits and petitions for hearing) shall be typewritten and double spaced, on letter size opaque paper (approximately 8 1/2 inches by 11 inches). The left margin shall be 1 1/2 inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.
- C. Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.
- D. The Commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (A), (B), and (C) of this Section.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-811 recodified from R4-13-811 (Supp. 95-1).

R20-5-812. Caption; Titles of Cases

- A. Cases initiated by the cited employer filing a Petition for Hearing contesting the violations cited shall be titled:
Division of Occupational Safety and Health of the Industrial Commission of Arizona, Complainant, vs. (name of employer), Respondent.
- B. Cases initiated by the cited employer filing a Petition for Hearing for modification of the abatement period shall be titled:
(name of employer), Petitioner vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent.
- C. Cases initiated by an affected employee filing a Petition for Hearing for modification of the abatement period shall be titled:
(name of affected employee or authorized employee representative), Petition vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent, and (employer), Respondent.
- D. The Titles listed in subsections (A) and (B) of this Section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits and Petitions for Hearing filed).
- E. The initial page of any pleading or document (other than exhibits and requests for hearing) shall show the citation number at the upper right of the page, opposite the title.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-812 recodified from R4-13-811 (Supp. 95-1).

R20-5-813. Requests for Hearing

- A. Requests for hearing shall be filed with the Commission.
- B. Requests for hearing shall be in writing and contain a clear and plain statement of the relief that is sought, together with the grounds thereof.
- C. The Commission shall, after receipt of a request for hearing, refer the file to the Hearing Officer Division for determination.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-813 recodified from R4-13-813 (Supp. 95-1).

R20-5-814. Pre-hearing Conference

- A. At any time before a hearing, the hearing officer, on his own motion or on motion of a party, may direct the parties, or their representatives, to exchange information or to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.
- B. The hearing officer may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-814 recodified from R4-13-814 (Supp. 95-1).

R20-5-815. Payment of Witness Fees and Mileage

Witnesses summoned before the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of Arizona. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-815 recodified from R4-13-815 (Supp. 95-1).

R20-5-816. Notice of Hearing

Notice of the time, place and nature of a hearing shall be given to the parties at least five days in advance of such hearing.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-816 recodified from R4-13-816 (Supp. 95-1).

R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing

- A. The failure of a party who has requested a hearing to appear at such scheduled hearing shall be deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and additionally a waiver of all rights except the right to be served with a copy of the decision of the hearing officer and to request review.
- B. Withdrawal of request for hearing shall be construed as an admission of the validity of any citation, abatement period or penalty issued or proposed. No decision need be issued in this case as the subject instrument is deemed to be admitted.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-817 recodified from R4-13-817 (Supp. 95-1).

R20-5-818. Duties and Powers of Hearing Officers

It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issued his decision, subject to the rules and regulations of the Commission, to:

1. Administer oaths and affirmations;
2. Rule upon admissibility of exhibits;
3. Rule upon applications for depositions;
4. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
5. Call and examine witnesses;

6. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
7. Adjourn the hearing as the needs of justice and good administration require;
8. Issue appropriate orders for protection of trade secrets;
9. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission.

Historical Note

Adopted effective August 27, 1975 (Supp. 75-1). R20-5-818 recodified from R4-13-818 (Supp. 95-1).

R20-5-819. Witnesses' Oral Deposition; In State

- A. After a request for hearing has been filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing within the state of Arizona shall file with the hearing officer, in duplicate, notice of taking deposition by oral examination. Copies of such Notice shall be served at least five days prior to the date of the deposition upon the deponent and upon every party by the party desiring to take the oral deposition.
- B. If any party or the deponent has any objection to the taking of the oral deposition of the party or witness, he shall file with the presiding hearing officer and serve on all parties written objections thereto setting forth the basis of the opposition to the deposition. Such objection shall be filed with the hearing officer within two days after the notice of taking deposition by oral examination is served.
- C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate.
- D. The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.
- E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other party.
- F. 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. Depositions taken pursuant to the provisions of this rule shall only be used at the time of a hearing for impeachment of a witness, unless the deponent is deceased at the time of the scheduled hearing, in which event it may be admitted into evidence.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-819 recodified from R4-13-819 (Supp. 95-1).

R20-5-820. Witnesses' Oral Deposition; Out-of-State

- A. After a request for hearing is filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing without the state of Arizona shall file with the hearing officer, in duplicate, a request for permission to take the deposition of such witness or witnesses. Such request shall show the name and address of such witness or witnesses and set forth the reason why said witness or witnesses' testimony is necessary for an adjudication of the issue. Copies of such request shall be served upon each party by the party requesting permission to take the deposition. If no objection to the request for permission to take the deposition is filed as provided in subsection (B) hereof, the hearing officer may, within 10 days,

in his discretion, grant or deny the permission to take the deposition. If the hearing officer permits the taking of the deposition, the party may proceed in the manner provided by and subject to the limitations of subsections (A), (D), (E), and (F).

- B. If any party has any objections to the taking of the oral deposition of the party or witness, he shall file with the hearing officer and serve on all other parties written objections thereto setting forth the basis for the opposition to the deposition. Such objection shall be filed with the hearing officer within five days after the request to take the deposition is served.
- C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate. If the hearing officer orders that the deposition proceed, the party may proceed to take the deposition in the manner provided by and subject to the limitation of R20-5-819, subsections (A), (D), (E), and (F).
- D. Any deposition taken pursuant to the provisions of this rule shall be filed with the Commission at least five days prior to the hearing date or any scheduled hearing and may be admitted into evidence. If the deposition is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the hearing officer.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-820 recodified from R4-13-820 (Supp. 95-1).

R20-5-821. Parties' Disposition upon Written Interrogatories

- A. After a request for hearing is filed with the Commission, any party desiring to take the deposition of another party upon written interrogatories shall file with the hearing officer, in duplicate, copies of the interrogatories sought to be submitted to the party. The written interrogatories submitted pursuant to this rule shall be limited to 25 in number with no subsections. Copies of such interrogatories shall be filed at least five days prior to any scheduled hearing.
- B. Answers to the interrogatories shall be served on all parties by the party answering the interrogatories within 10 days after service of the interrogatories, or within 10 days after a ruling by the hearing officer that the interrogatories be answered.
- C. No scheduled hearing shall be cancelled or continued for failure to take or complete the taking of a deposition taken pursuant to the provisions of this rule.
- D. Depositions taken pursuant to the provisions of this rule shall only be used at the time of hearing for impeachment of a witness unless the deponent is deceased at the time of the scheduled hearing in which event they may be admitted into evidence.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-821 recodified from R4-13-821 (Supp. 95-1).

R20-5-822. Refusal to Answer; Refusal to Attend

- A. If a party or other deponent refuses to answer any question propounded upon oral examination pursuant to R20-5-819 and R20-5-820, the examination shall be completed in other matters or adjourned, as the proponent of the question may prefer. Thereafter on reasonable notice to all persons affected thereby the proponent of the question may apply to the hearing officer for an order compelling an answer. Upon the refusal of a depo-

nent to answer any interrogatory submitted under R20-5-821, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the hearing officer finds that the refusal was without substantial justification, the hearing officer shall require the refusing party, or deponent and the party, or representative advising the refusal or either of them to pay to the examining party the amount of the reasonable attorney's fees incurred in obtaining the order and the reasonable expenses which will be incurred to obtain the requested answers. If the motion is denied and if the hearing officer finds that the motion was made without substantial justification, the hearing officer shall require the examining party or the representative advising the motion, or both of them, to pay to the refusing party or witness the amount of the reasonable attorney's fees incurred in opposing the motion.

- B.** If a party or an officer or managing agent of a party wilfully fails to appear before an officer who is to take his deposition after being served with the proper notice, or fails to serve answers to interrogatories after proper service of such interrogatories, the hearing officer, on motion and notice, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part thereof, or preclude the introduction of evidence.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-822 recodified from R4-13-822 (Supp. 95-1).

R20-5-823. Burden of Proof

- A.** In all proceedings other than those stated in subsection (B) commenced by the filing of a request for hearing, the burden of proof shall rest with the Commission.
- B.** In proceedings commenced by a request for hearing requesting modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-823 recodified from R4-13-823 (Supp. 95-1).

R20-5-824. Intermediary Rulings or Orders by the Hearing Officer

No intermediary rulings or orders by the hearing officer may be appealed to the Review Board but shall become a part of the record.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-824 recodified from R4-13-824 (Supp. 95-1).

R20-5-825. Legal Memoranda

Legal memoranda may be filed if request is granted by the hearing officer. If such request is granted the hearing officer shall establish a reasonable time for such filing and response or simultaneous filing.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-825 recodified from R4-13-825 (Supp. 95-1).

R20-5-826. Decisions of Hearing Officers

- A.** The decision of the hearing officer shall include findings and conclusions of fact and law, and an order.
- B.** The hearing officer shall sign the decision. Upon issuance of the decision, jurisdiction shall rest solely in the Commission, and if a request for review is filed it shall be addressed to the Commission.

Historical Note

Amended effective August 27, 1975 (Supp. 75-1). R20-5-

826 recodified from R4-13-826 (Supp. 95-1).

R20-5-827. Settlement

- A.** Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.
- B.** Settlement agreement submitted by the parties shall be accompanied by an appropriate proposed order which shall be signed by the assigned hearing officer or chief hearing officer.
- C.** Where parties to the settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in R20-5-806. Proof of such service shall accompany the proposed settlement when submitted to the Commission or the hearing officer.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-827 recodified from R4-13-827 (Supp. 95-1).

R20-5-828. Special Circumstances; Waiver of Rules

In special circumstances, or for good cause shown, the hearing officer may, upon application by any party, or on his own motion, waive any rule or make such orders as justice or the administration of the Act requires.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-828 recodified from R4-13-828 (Supp. 95-1).

R20-5-829. Variances

- A.** Any hearing concerning variances shall be filed before the Commissioners at a time set by the Commission.
- B.** Such proceeding shall be informal but shall be transcribed at the expense of the person seeking the variance if a written record of the proceeding is desired.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-829 recodified from R4-13-829 (Supp. 95-1).

ARTICLE 9. EXPIRED

R20-5-901. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-901 repealed, new Section R4-13-901 adopted effective May 27, 1977 (Supp. 77-3). R20-5-901 recodified from R4-13-901 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-902. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-902 repealed, new Section R4-13-902 adopted effective May 27, 1977 (Supp. 77-3). R20-5-902 recodified from R4-13-902 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-903. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-903 repealed, new Section R4-13-903 adopted effective May 27, 1977 (Supp. 77-3). R20-5-903 recodified from R4-13-903 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-904. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-904 repealed, new Section R4-13-904 adopted effective May 27, 1977 (Supp. 77-3). R20-5-904 recodified from R4-13-904 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-905. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-905 repealed, new Section R4-13-905 adopted effective May 27, 1977 (Supp. 77-3). R20-5-905 recodified from R4-13-905 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-906. Expired

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-906 repealed, new Section R4-13-906 adopted effective May 27, 1977 (Supp. 77-3). R20-5-906 recodified from R4-13-906 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-907. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-907 recodified from R4-13-907 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-908. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-908 recodified from R4-13-908 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-909. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-909 recodified from R4-13-909 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-910. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-910 recodified from R4-13-910 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-911. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-911 recodified from R4-13-911 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-912. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-912 recodified from R4-13-912 (Supp. 95-1). Section expired

pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-913. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-913 recodified from R4-13-913 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

R20-5-914. Expired

Historical Note

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-914 recodified from R4-13-914 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

ARTICLE 10. WAGE CLAIMS

R20-5-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23-356.
2. "Claimant" means an individual who files a claim.
3. "Day" means calendar day.
4. "Department" means the Labor Department of the Industrial Commission of Arizona.
5. "Determination" means a finding by the Department under A.R.S. § 23-357 that a claim is either valid or invalid or that the Department cannot resolve the dispute.
6. "Director" means the Director of the Department.
7. "Dismissal" means an action by the Department in which the Department dismisses the claim and refers the claimant to other statutory remedies.
8. "Notice" or "notification" when made by the Department or the Director means a written communication transmitted to the employer or claimant, or both, by regular mail.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1001 recodified from R4-13-1001 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1002. Forms

The following forms are available upon request from the Department or from the Industrial Commission's Internet web site at www.ica.state.az.us:

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:
 - a. Claimant's name, address, telephone number, and date of birth;
 - b. Employer's name, address, telephone number, and description of business;
 - c. Claimant's dates of employment, position, and pay;
 - d. The amount of the wages claimed and whether the claimant requested payment of the wages from employer; and
 - e. Claimant's signature and signature date.
2. Employer response. The employer responding to a claim shall provide the following information to the Department:
 - a. Employer's name, address, telephone number, and description of business;
 - b. Claimant's dates of employment, position, and pay;
 - c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
 - d. Employer's signature and signature date.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1002 recodified from R4-13-1002 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

- A. A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.
- B. In computing any period of time prescribed or allowed by this Article, 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 and Saturdays, Sundays, and legal holidays are included in the computation of time.
- C. The date of filing of the claim is the date the claimant's wage claim form is received by the Department.
- D. The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.
- E. An individual filing a form or document related to a claim shall legibly fill out the form or document in ink or type.
- F. If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant by regular mail with a request that the claimant provide the required information and return the completed wage claim form to the Department within 10 days from the date of the Department's request. If the Department does not receive the completed wage claim form within 10 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1003 recodified from R4-13-1003 (Supp. 95-1). Former R20-5-1003 renumbered to R20-5-1004; new R20-5-1003 made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1004. Investigation of Claim

- A. The Department shall mail a copy of a claimant's wage claim form within 10 days after the Department's receipt of the form to the employer listed on the wage claim, with a request that the employer complete and file the employer response form within 10 days of the date of the Department's mailing.
- B. If the Department does not receive the employer response form under subsection (A), the Department shall provide written notice to the employer stating that the employer must pay the amount claimed or file a written response to the wage claim within 10 days of the date of the Department's written notice.
- C. If the employer timely files the employer response under subsection (A), but the response is incomplete, the Department shall mail the employer a notice requesting that the employer file the required information within 10 days of the date of the Department's notice. If the Department does not receive the required information within 10 days, the Department shall make a determination regarding the claim based on the evidence in the file.
- D. If the employer's response disputes the amount of wages claimed by the claimant, the Department shall mail a copy of the employer's response to the claimant and offer the claimant the opportunity to file a written reply to the employer's response within 10 days from the date of the Department's

mailing. If the Department does not receive claimant's reply within 10 days, the Department shall make a determination of the claim based on the evidence in the file.

- E. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department shall make a determination of the claim based on the evidence in the file.
- F. Upon request from the Department, and if necessary to complete the Department's investigation, the claimant, the employer, or both, shall submit further written information or meet with the Director or his designee. Except for statements made during settlement, mediation, or an informal conference, the Director or his designee shall administer oaths for the purpose of taking affidavits and shall tape record the meeting.
- G. Upon completion of its investigation, the Department shall notify the parties to the claim of the Department's determination in writing.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1004 recodified from R4-13-1004 (Supp. 95-1). Former R20-5-1004 renumbered to R20-5-1005; new R20-5-1004 renumbered from R20-5-1003 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1005. Mediation of Disputes

- A. During the investigation of a claim, the Department may mediate and conciliate a dispute between the claimant and the employer.
- B. If mediation results in an informal resolution of the claim, the Director or the Director's designee shall prepare and ensure execution of documents providing for the resolution of the claim.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1005 recodified from R4-13-1005 (Supp. 95-1). Former R20-5-1005 renumbered to R20-5-1006; new R20-5-1005 renumbered from R20-5-1004 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1006. Dismissal of Claim

- A. The Department shall dismiss a claim if:
 1. The claim is filed more than one year after the date of the accrual of the claim,
 2. The claimant does not comply with R20-5-1003(F),
 3. The amount of wages claimed exceeds \$2,500.00,
 4. The Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.,
 5. The claimant has filed a civil action regarding the same claim,
 6. The employer listed on the claim is in bankruptcy,
 7. The Department is unable to locate the employer based on the information provided by the claimant, or
 8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.
- B. The Department shall send a notice of dismissal to the claimant and, except as provided in subsections (A)(1) through (A)(3) and (7), the Department shall send a notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1006 recodified from R4-13-1006 (Supp. 95-1). Former

R20-5-1006 renumbered to R20-5-1007; new R20-5-1006 renumbered from R20-5-1005 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1007. Notice of Right of Review

- A. A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.
- B. The Department shall serve a determination on the parties by regular mail.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1007 recodified from R4-13-1007 (Supp. 95-1). Former R20-5-1007 renumbered to R20-5-1008; new R20-5-1007 renumbered from R20-5-1006 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1008. Payment of Claim

- A. The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested.
- B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by sending a letter to the claimant by regular mail. If the claimant does not respond to the Department's letter within 10 days of the date of the Department's letter, the Department shall deem the claim to have been paid.
- C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.
- D. In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

Historical Note

New R20-5-1008 renumbered from R20-5-1007; Section amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

R20-5-1009. Service of Determinations, Notices, and Other Documents

- A. A determination, notice, or other document required by this Article or other law to be mailed or served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.
- B. Service may be made and is deemed complete by depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

R20-5-1101. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.

"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.

"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

"Authorized signature" means the signature of an officer of the self-insurer.

"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.

"Chief counsel" means the chief counsel for the Industrial Commission of Arizona.

"Claim" means a worker's compensation claim.

"Claims Division," means the Claims Division of the Industrial Commission of Arizona.

"Classification code" means a number assigned by an approved rating organization that classifies employees by type of job performed.

"Control" means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt-status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Accounting Division of the Industrial Commission of Arizona.

"Ex-medical plan" means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer's employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

"Excess insurance carrier" means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Fixed premium plan" means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

"Fully-funded risk management fund" means a fund that maintains a positive equity balance that is sufficient to cover all of the fund's actuarial losses.

"Guaranteed cost plan" means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

"Individual employer" means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.

“Parent company” means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as “control” is defined in this Article.

“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

“Public entity” means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

“Rating organization,” means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.

“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

“Self-insurer” or “self-insured” means an individual employer that the Commission authorizes to self-insure for workers’ compensation insurance under A.R.S. § 23-961.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1102. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, 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 computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.
- B. Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1103. Forms

The following forms are available upon request from the Division or from the Commission’s Internet site at www.ica.state.az.us, and include the following information for each:

- A. Initial application for authority to self-insure:
 1. Legal name of the applicant and requested effective date for authority to self-insure;
 2. Mailing address and telephone number of applicant’s principal Arizona office and home office;
 3. Name of state under which applicant is incorporated, if applicant is a corporation;
 4. Name of parent company, if applicant is a subsidiary;
 5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;
 6. Length of time in business in Arizona and elsewhere, if applicable;
 7. Nature or type of business in Arizona;
 8. Arizona payroll data;
 9. Current workers’ compensation insurance data, including current expiration date;
 10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of workers’ compensation insurance held by the applicant has ever been cancelled;
 11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;
 12. Arizona claims history and data for three years preceding application date;
 13. Arizona loss history and experience modification rates for three years preceding application date;
 14. Name of excess insurance carrier;
 15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers’ compensation claims;
 16. Name and address of Arizona agent upon whom legal notice may be served;
 17. Selection of tax plan;
 18. Name, address, telephone and facsimile number, and e-mail address of person responsible for completing the premium tax information;
 19. Name, address, and telephone number of claims office where Arizona workers’ compensation claims will be processed;
 20. Name, address, telephone and facsimile number, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;
 21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 22. Listing of required attachments.
- B. Workers’ compensation liability form:
 1. Name of self-insurer;
 2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
 - a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
 - b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these

- claims to equal the remaining liability or amount owing on these claims;
- c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and
- d. The amount calculated in subsection (B)(2)(c) multiplied by 125%;
3. Name of excess insurance carrier that provides reimbursement to self-insurer; and
4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;
- C. Self-insurance workers' compensation guaranty bond:**
 1. Name of self-insurer;
 2. Name of the surety insurance company;
 3. Description of the bond, bond number, amount, and conditions of obligation;
 4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and
 5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a notarized power of attorney, and date of signing.
- D. Parent company guaranty:**
 1. Name and state of incorporation of parent company;
 2. Name of self-insured subsidiary to be included in the guaranty;
 3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and
 4. Corporate seal.
- E. Self-insured payroll report:**
 1. Name of self-insured;
 2. Tax plan selection;
 3. Period covered by report;
 4. Payroll description (classification codes, methods, and types of pay);
 5. Amount paid for period covered by the report;
 6. Statement that all information contained in the report is correct; and
 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- F. Self-insured medical report:**
 1. Name of self-insured;
 2. Period covered by report;
 3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;
 4. Compensation paid to worker's compensation claimants;
 5. Insurance premiums paid;
 6. Total expenditures for workers' compensation and occupational disease claims;
 7. Statement that all information contained in the report is correct; and
 8. Request for authorized signature, date, title, and telephone number of person signing the form.
- G. Self-insured hospital report:**
 1. Name of self-insurer;
 2. Period covered by report;
3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;
5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
6. Statement that all information contained in the report is correct; and
7. Request for authorized signature, date, title, and telephone number of person signing the form.
- H. Self-insured injury report:**
 1. Name of self-insurer;
 2. Period covered by report;
 3. Description of individual claims for the current year and three preceding years requiring payment greater than \$5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
 4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding years for all claims requiring a total payment less than \$5,000.00 for each claim;
 5. Statement that all information contained in the report is correct; and
 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- I. Quarterly tax payment:**
 1. Name and address of the self-insurer;
 2. Designation of the applicable quarter;
 3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
 4. Statement that all information contained in the form is correct; and
 5. Request for authorized signature, date, title, and telephone number of person signing the form.
- J. Notice of self-insurer's termination of self-insurance:**
 1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
 - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
 - b. Names and addresses of all partners, if self-insurer is a partnership; and
 - c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
 2. Effective date of termination of authority to self-insure;
 3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
 4. For the new coverage; effective date of workers' compensation coverage;
 5. Statement that all information contained in the form is correct; and
 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- K. Self-provider of medical benefits:**
 1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
 2. If the self-insurer is directing medical care for its employees, the self-insurer shall:

- (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
 - (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
 - (c) The effective date of the agreements between the employer and medical provider; and
3. Authorized signature, date, and title of person signing the form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1104. Commission Approval to Act as Self-insurer

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:

- 1. The Commission authorizes the employer to be self-insured; and
- 2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1105. Resolution of Authorization

The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1106. Time-frames**A. Administrative completeness review.**

- 1. Initial application.
 - a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
 - c. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
- 2. Request for renewal.
 - a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. § 23-961 and this Article.
 - b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).

B. Substantive review.

- 1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
- 2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.

C. Overall time-frame.

- 1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.
- 2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.

- D.** If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1107. Initial Application under A.R.S. § 23-961

- A.** A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:
 - 1. Provides an annual payroll in Arizona of at least \$2,000,000; and
 - 2. Has total assets of at least \$50,000,000.
- B.** An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:
 - 1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;
 - 2. Provides an annual payroll in Arizona of at least \$2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;
 - 3. Meets either of the following thresholds:
 - a. Has assets of at least \$50,000,000; or
 - b. Has \$10,000,000 in net worth and a cash flow ratio of at least .25.
- C.** The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.
- D.** The authorized representative of the applicant shall sign and date the initial application.
- E.** The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.

F. The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:

1. A statement from the board of directors or governing body:
 - a. Authorizing the filing of the application, and
 - b. Designating the person given authority to sign the application on behalf of the applicant;
2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;
3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;
4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally-reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;
5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).

G. The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company provides the following information with the initial application:

1. The information required in Section (F);
2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;
3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and
4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1108. Self-insurance Renewal

A. A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:

1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report;
2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;

3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);
4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;
5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;
6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;
7. A statement of the total number of full-time and part-time Arizona employees;
8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;
10. Name of the third-party administrator;
11. Principal location of the self-insurer in Arizona;
12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;
13. List of any subsidiary company located in Arizona; and
14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and e-mail information.

B. A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:

1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and
2. A certified statement that contains the information described in R20-5-1114 (A) and (B).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1109. Security Deposit; Excess Insurance Policy

- A. Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least \$100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.
- B. Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.
- C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.

- D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:
1. The self-insurer satisfies the minimum-security requirement of A.R.S. § 23-961,
 2. The self-insurer does not reduce or offset the minimum-security amount by an excess insurance,
 3. The self-insurer calculates the credit on the Workers' Compensation Liability form,
 4. The excess insurance policy contains a 60-day notice of termination,
 5. The excess insurer does not have an affiliate relationship with the self-insurer,
 6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy, and
 7. The excess insurer posts a deposit under A.R.S. § 23-961(D).
- E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall immediately:
1. Provide written notice of the notice of termination to the Division, and
 2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

- A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective date as the effective date of the Resolution of Authorization to self-insure.
- B. The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:
1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;
 2. The guaranty bond is continuous in form;
 3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;
 4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;
 5. An authorized agent of the surety executes the guaranty bond or rider;
 6. The bond is signed and dated by an authorized representative of the self-insurer;
 7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
 8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.
- C. A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit

- A. Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.
- B. The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
- C. If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:
1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
 2. Sell or order the sale of the security or any part of the security; or
 3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.
- D. The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.
- E. Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)

- A. Letter of Credit:
1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.
 2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
 3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.
 4. The letter of credit is acceptable only if:
 - a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;
 - b. Is for a period of one year from the effective date;
 - c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;

- d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;
- e. The letter of credit states the amount available under the letter of credit; and
- f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
 - i. The self-insurer has failed to comply with its workers' compensation obligations; or
 - ii. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.

B. Local Government Investment Pool Funds (LGIP):

- 1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP) fund only if:
 - a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws;"
 - b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;
 - c. The Commission has the ability to:
 - i. Collect or order collection of the funds; and
 - ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;
 - d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language: Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.
- 2. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1113. Substitution of Securities

The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1114. Exemption from Requirement to Post Security

- A.** Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:
 - 1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and
 - 2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.
- B.** Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:
 - 1. A statement that the public entity meets the conditions required under subsection (A);
 - 2. A statement that the governing body of the public entity shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;
 - 3. The signatures of a majority of the members of the public entities' governing body; and
 - 4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.
- C.** Approval or denial of request for exemption.
 - 1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or provided to the Commission, within 30 days after receiving written notice under subsection (B).
 - 2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.
- D.** Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or pro-

vide security as required under this Article if any of the following occurs:

1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;
2. The self-insurer fails to comply with the conditions in subsection (A); or
3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1115. Rating Plans Available for a Self-insurer

- A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:
 1. Fixed-premium plan;
 2. Ex-medical plan;
 3. Guaranteed-cost plan; or
 4. Retrospective-rating plan.
- B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.
- B. A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:
 1. The self-insurer elects this plan;
 2. The self-insurer's annual net taxable premium does not exceed \$100,000; or
 3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.
- C. A self-insurer shall provide the following information in support of the fixed-premium plan:
 1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report, and
 3. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.
- B. A self-insurer may use the ex-medical plan if:
 1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and
 2. The self-insurer's annual net taxable premium exceeds \$100,000.

- C. A self-insurer shall provide the following information in support of the plan submitted under this Section:

1. Self-insurer's Payroll Report,
2. Self-insurer's Hospital Report,
3. Self-insurer's Medical Report, and
4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].
- B. A self-insurer may use the guaranteed-cost plan if:
 1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. Uses an experience modification rate calculated as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.
- C. A self-insurer shall provide the following information in support of the guaranteed-cost plan:
 1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report,
 3. Self-insurer's Injury Report, and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a retrospective-rating plan as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.
- B. A self-insurer may use the retrospective-rating plan if:
 1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. The Division calculates the experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.

cation rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.

- C. A self-insurer shall provide the following information in support of the retrospective-rating plan:
1. Self-insurer's Payroll Report;
 2. Self-insurer's Medical Report;
 3. Self-insurer's Injury Report; and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

- A. A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.
- B. After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.
- C. A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least \$250.00 per calendar year.
- D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
1. 25% of the tax calculated for the previous year; or
 2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.
- E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
- F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S.

Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1122. Report, Book, Record, and Data Review by the Commission

- A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.
- B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.
- C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1123. Audit and Cost of Audit

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1124. Requirement to Provide Information to the Commission

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files

In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;

2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

- A.** Upon the filing of a completed initial application or request for renewal, the Division shall:
1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
 2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
 3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
 - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
 - b. Review of claims filed for the three preceding years;
 - c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;
 - d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
 - e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;
 4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
 - a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;
 - ii. Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
 - iii. Reviewing notes to the financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer; and
 - v. Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;

- b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;
 - ii. Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
 - iii. Reviewing notes to the self-insurer's financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer;
 - v. Comparing the public entity's ratio of claims filed to total employees with that of other public entities;
 - vi. Comparing cash and fund equity ratios with that of other self-insured public entities; and
 - vii. Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;
 - c. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the information in subsection (A)(4)(a);
 - ii. Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing of the self-insurer's experience modification rate;
 - iv. Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
 - v. Reviewing the Parent Company Guaranty form; and
 - d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the information in subsection (A)(4)(b);
 - ii. Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing the self-insured's experience modification rate; and
 - iv. Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.
- B.** The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

- A.** The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:
1. The information submitted by an applicant or self-insurer;

2. The information and recommendations of the Division; and
 3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.
- B.** The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,
 2. The applicant or self-insurer does not meet the requirements of this Article, or
 3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.
- C.** The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.
- D.** Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.
- E.** If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:
1. The approval is contingent upon the self-insurer posting the required security;
 2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;
 3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and
 4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.
- F.** If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.
- G.** If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.
- H.** If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.
- I.** If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1129. Right to Request a Hearing

- A.** An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representa-

tive. The applicant or self-insurer shall file the request for hearing with the Division.

- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1130. Hearing Rights and Procedures

- A.** Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.
- B.** Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.
- C.** Appearance by a party.
1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.
- D.** Filing and service.
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E.** Notice of hearing.
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.
 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.
- F.** Evidence.
1. The civil rules of evidence do not apply to hearings held under this Section.
 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that

the statement will be helpful to a determination of the issues.

3. All witnesses at a hearing shall testify under oath or affirmation.
 4. A party may present evidence and conduct cross-examination of witnesses.
 5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.
 7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- G.** Transcript of Proceedings. The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1131. Decision Upon Hearing by the Commission

- A.** A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- C.** The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.
- D.** The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1132. Request for Review

- A.** A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B.** A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;

2. Accident or surprise, which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1133. Revocation of Authorization to Self-insure

- A.** The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;
 2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
 3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
 - a. Promptly provide the Commission reports or other information required under this Article; and
 - b. File the written Letter of Intent required under R20-5-1135;
 4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;
 5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
 6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
 7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
 8. Failure to deposit or file security timely as specified in this Article; or
 9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.
- B.** Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.
- C.** The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
- D.** The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon

the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.

- E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
 - 1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
 - 2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
 - 3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.
- B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.
- D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.
- E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.

- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
 - 1. Are pending at that time the self-insurer terminates self-insurance; and
 - 2. Occur after the effective date of the termination of self-insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**ARTICLE 12. ARIZONA MINIMUM WAGE ACT
PRACTICE AND PROCEDURE**

R20-5-1201. Notice of Rules

- A. This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
- B. The Commission shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1202. Definitions

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

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

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1203. Duty to Provide Current Address

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785,

effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1204. Forms Prescribed by the Department

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1205. Determination of Employment Relationship

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:
 - 1. The degree of control the alleged employer exercises over the individual,
 - 2. The individual's opportunity for profit or loss and the individual's investment in the business,
 - 3. The degree of skill required to perform the work,
 - 4. The permanence of the working relationship, and
 - 5. The extent to which the work performed is an integral part of the alleged employer's business.
- B. An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C. An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.

- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
 1. Require or permit employees to pool, share, or split tips; and
 2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1207. Tip Credit Toward Minimum Wage

- A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
 1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
 2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
 3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
 4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
 5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1208. Posting Requirements

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
 1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
 1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;
 3. Date of birth, if under 19;
 4. Occupation in which employed;

5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
 11. Total wages paid each pay period; and
 12. Date of payment and the pay period covered by payment.
- C.** For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
1. Records containing the information and data required under subsections (B)(1) through (B)(5), (B)(11) and (B)(12) of this Section; and
 2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
- D.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
 2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
- E.** With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
 2. Amount of tips the employee reports to the employer;
 3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
 4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
 5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
 6. Copy of the notice required under R20-5-1207(C).
- F.** An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1211. Administrative Complaints

- A.** A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.
- B.** A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C.** The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D.** Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E.** For good cause, and upon its own complaint, the Department may investigate violations under the Act.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1212. Conduct that Hinders Investigation

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

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.
- C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
 - 1. Rehiring or reinstatement,
 - 2. Reimbursement of lost wages and interest,
 - 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
 - 4. Posting of notices to employees.
- D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
 - 1. The name and address of the party requesting the hearing,
 - 2. The signature of the party or the party's authorized representative, and
 - 3. A statement that a hearing is requested.

- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.
- B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
 - 1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
 - 2. Accident or surprise that could not have been prevented by ordinary prudence;
 - 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 - 4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
 - 5. Bias or prejudice of the Department or administrative law judge; and
 - 6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.

- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant

or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1219. Resolution of Disputes

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

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
 1. State the reasons for the request for relief;
 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
 3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
 1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
 2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department's written authorization.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).