



6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Until 1997, Arizona law mandated that employers “secure workers’ compensation to their employees” by either: (1) acquiring insurance from a carrier licensed to write workers’ compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. See A.R.S. § 23-961(A). In 1997, the Arizona Legislature added “self-insurance pools” as a third mechanism for securing workers’ compensation. See A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers’ compensation pool to provide for the direct payment and administration of workers’ compensation claims.

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

“Specific excess insurance,” in this context, refers to insurance coverage purchased from an insurer who will be liable for the payment of any amount of a particular workers’ compensation claim in excess of a retained predetermined amount (the specific retention) paid directly by the self-insurance pool. Once a pool has paid the specific retention for a particular claim, the specific excess insurer would be obligated to pay all remaining amounts due on that claim (with no upper limit). Specific excess insurance mitigates a pool’s risk resulting from any particular claim.

“Aggregate excess insurance,” in this context, refers to coverage purchased from an insurer who will be liable for the payment of any amount of the aggregate of all a pool’s workers’ compensation claims in excess of a retained predetermined amount (the aggregate retention) paid directly by the pool. Once the pool has paid the aggregate retention amount, the aggregate excess insurer would be obligated to pay all remaining claim liabilities on all claims (subject to policy limits). Aggregate excess insurance mitigates a pool’s overall risk from all claims.

In 1998, following the enactment of A.R.S. § 23-961.01, the Commission adopted rules (Title 20, Chapter 5, Article 7) to implement the new legislation, including a rule (R20-5-715(D)) which established excess coverage and retention requirements for self-insurance pools. Specifically, the maximum permissible retention amounts were set at \$250,000 (specific retention) and “110% of collected premiums” (for aggregate retention). The minimum aggregate insurance coverage limit was set at \$5,000,000.

In 1998, when R20-5-715 was implemented, the excess insurance required by the rule was widely available in the insurance market at competitive prices. Today, however, Arizona employers have been effectively precluded from forming self-insurance pools because the required excess insurance products are either unavailable in the insurance market or are cost prohibitive. This is evidenced by the fact that no self-insurance pools under A.R.S. § 23-961.01 are currently in operation in Arizona. In short, the excess insurance requirements of R20-5-715(D) have become an impediment to the formation of self-insurance pools, frustrating the intent of A.R.S. § 23-961.01. The Commission seeks to remove these impediments by amending the rule to reflect present economic realities within the excess insurance industry.

The proposed amendments will allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In lieu of a maximum specific retention amount of \$250,000, the proposed amendments authorize a range of specific retention amounts from \$100,000 up to \$1,250,000. In lieu of a maximum aggregate retention amount of “110% of collected premiums,” the proposed amendments authorize a maximum aggregate retention amount of “150% of collected premiums.” And in lieu of a minimum aggregate excess coverage limit of \$5,000,000, the proposed amendment authorizes a minimum coverage amount of \$1,000,000. Finally, the proposed amendments give the Commission flexibility to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Each of these proposed amendments seeks to ease the regulatory burden on employers who may be interested in forming self-insurance pools by authorizing excess insurance products that are more accessible in the current insurance market and that are not cost prohibitive.

The proposed amendments are designed to make self-insurance pools a viable and cost-effective option for employers to provide workers’ compensation to their employees. The proposed amendments will promote the statutory objectives of A.R.S. § 23-961.01(F), while continuing to ensure that self-insurance pools are financially able to provide for the payment and administration of workers’ compensation claims.

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

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



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

Not applicable

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

EMPLOYERS and EMPLOYEES: The proposed amendments ease the regulatory burden on employers who participate in self-insurance pools by authorizing excess insurance products that are cost-effective and more accessible in the current insurance market. Arizona employers, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments. In addition, incentivizing the use of self-insurance pools will likely lead to increased workplace safety and a reduction in industrial injuries.

INSURERS: As a result of the proposed rulemaking, Arizona employers may elect to participate in a self-insurance pool in lieu of purchasing workers' compensation insurance under A.R.S. § 23-961(A)(1). This shift would result in a decrease in sales of workers' compensation insurance policies and an increase in sales of specific and aggregate excess insurance policies. Although some impact on the insurance industry is expected, the Commission does not believe the impact of the proposed amendments will be significant for any particular insurance carrier.

SPECIAL FUND: The proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the Special Fund would benefit because workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Two non-substantive changes were made to subsection (D)(1)(a) of the proposed amended rule. The word "Maximum" was deleted because the proposed amendments replace the maximum permissible specific retention with an authorized range of specific retention amounts, thereby rendering the word "Maximum" superfluous. Second, due to the deletion of the word "Maximum," which began the sentence, the word "retention" was capitalized.

11. An agency's summary of the public or stakeholder comments made about the rulemaking:

No oral or written comments were submitted on this rulemaking.

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

None

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

The amended rule does not require a permit.

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

The subject of the rulemaking, *i.e.*, retention and policy amounts for specific and aggregate excess insurance for a self-insurance pool under A.R.S. § 23-916.01, is a matter of state law. The Commission is not aware of any applicable federal law.

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

No

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rule follows:



TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

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

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

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

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

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