

**ARIZONA DIVISION OF OCCUPATIONAL HEALTH AND SAFETY
BOILER SAFETY SECTION
SMALL BUSINESS BILL OF RIGHTS**

The [Arizona Division of Occupational Safety and Health](#) (ADOSH), [Boiler Safety Section](#) (ADOSH Boiler Safety), pursuant to Arizona Revised Statutes (A.R.S.) [§ 41-1001.01](#), is required to provide small businesses with a *Bill of Rights* relating to statutorily defined business activities with ADOSH Boiler Safety. "Small business" is defined in [Arizona Revised Statutes § 41-1001](#) as an independently owned and operated business, not dominant in its field, employing less than one hundred full time employees or with less than four million dollars in gross annual receipts in its last fiscal year.

1. A regulated person is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in [A.R.S. § 12-348](#).
2. A regulated person is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in [A.R.S. § 41-1007](#).
3. A regulated person is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in [A.R.S. § 41-1008](#). ADOSH Boiler Safety may enter into agreements to provide inspection services during the manufacture, assembly, erection, or repair of boilers, lined hot water storage heaters or any appurtenant components to such boilers or heaters whenever such inspections are requested by holders of authorized symbols of American society of mechanical engineers or the national board of boiler and pressure vessel inspectors. The commission, through ADOSH Boiler Safety, may fix and collect inspection fees pursuant to [A.R.S. § 23-488](#).
4. A regulated person is entitled to receive the information and notice regarding inspections and audits prescribed in [A.R.S. § 41-1009](#) and [Arizona Administrative Code R20-5-409](#) (for certificate inspections).
5. A regulated person is entitled to receive the following information and notice from an agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection as provided in [A.R.S. § 41-1009](#):
 - (a) Present photo identification on entry of the premises.
 - (b) On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
 - (c) Disclose any applicable inspection or audit fees.
 - (d) Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
 - (e) The agency inspector or regulator must provide notice of the right to have on request:

- (1) Copies of any original documents taken by the agency during the inspection or audit if the agency is permitted by law to take original documents.
- (2) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
- (3) Copies of any analysis performed on samples taken during the inspection.
- (4) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise permitted by law to do so.
- (f) The agency inspector or regulator shall inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
- (g) The agency inspector or regulator shall inform each person interviewed during the inspection or audit that statements made by the person may be included in the inspection or audit report.

6. The inspector shall comply with the guidelines set forth in the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda. [A.A.C. R20-5-407](#).

7. At the time of the inspection, if the inspected boiler is in compliance, the Boiler Safety Inspector will affix a notification to the inspected boiler attesting to compliance at the time of the inspection. If the regulated person desires more information about the inspection, the Boiler Safety Inspector will provide the regulated person with a username and passcode to access the information via the Safety Boiler's Section's website. If the boiler does not pass the inspection, the Boiler Safety Inspector will comply with the notice of violation provisions in [A.R.S. § 23-478](#) (see paragraph 11).

8. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing: 1) The rights described in paragraph 5 of this *Small Business Bill of Rights*, and [A.R.S., § 41-1001.01\(C\)](#); 2) The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit; and 3) The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.

9. The Boiler Safety Inspector shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in paragraph 9 of this section indicating that the regulated person or on-site representative has read the writing prescribed in paragraph 9 and is notified of their due process rights. The agency shall maintain a copy with the regulated person or on-site representative of the regulated person.

10. At least once every month after the commencement of the inspection, the agency shall provide the regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. The agency is not required to provide an update after the regulated person is notified that no agency action will result from the

agency inspection or after the completion of agency action resulting from the agency inspection.

11. If the division, following an inspection or investigation determines that there is reasonable cause to believe that there exists a violation of a standard or regulation the division shall issue a notice of violation directing any repairs, improvements, changes or additions necessary to eliminate the hazard. Each notice of violation shall be in writing, delivered either by mail or in person and shall contain the following:

(1) A particular description of the nature of the violation, including a reference to the provision of this article or of any standard or regulation alleged to have been violated.

(2) A reasonable time for the abatement of the violation.

(B) Each notice of violation issued pursuant to this section or a copy or copies of such notice of violation shall be prominently posted at or near each place a violation referred to in the notice of violation existed.

(C) If in the opinion of the director or the director's authorized representative the continued operation of the defective boiler or lined hot water storage heater constitutes an immediate danger to the safety of the occupants of the establishment or the persons operating such boiler or lined hot water storage heater the director or director's authorized representative may condemn such device and require it to be returned to a condition allowing safe operation before its use is resumed.

(D) Upon failure of an owner or operator to comply with either the requirements of a notice of violation issued pursuant to subsection A or condemnation pursuant to this subsection, the commission may file an action in the superior court of the county where the violation occurred to enjoin the owner or operator from engaging in further acts in violation of the requirements of this notice of violation or the condemnation. Any person found to be in contempt of an injunctive order of the court shall be fined not less than fifty nor more than three hundred dollars with each day of violation constituting a separate contempt. [A.R.S. § 23-478](#).

12. A person may petition the commission for an extension of time to comply with an order, which the commission shall grant if it finds the extension necessary. [A.R.S. § 23-482](#).

13. Any interested party may request a hearing before the commission to contest the notice of violation issued as provided in [A.R.S. § 23-479](#), and may have the person's administrative hearing on contested cases heard by an administrative law judge.

14. A party may request for review of an administrative law judge decision and need only state that the party requests review of the decision. [A.R.S. § 23-481](#).

15. Any party affected by a decision of the commission or by a decision upon review as provided in [A.R.S. § 23-481](#) may apply to the court of appeals by a petition for special action to review the lawfulness of the decision, order or decision upon review. [A.R.S. § 23-483](#).

16. A regulated person may review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in [Title 41, Chapter 6, Article 2, Arizona Revised Statutes](#).

17. A regulated person may participate in the rulemaking process as provided in [Title 41, Chapter 6, Articles 3, 4, 4.1 and 5](#) of this chapter, including:

(a) Providing written comments or testimony on proposed rules to an agency as provided in [A.R.S. § 41-1023](#) and having the agency adequately address those comments as provided in [A.R.S. § 41-1052](#), subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.

(b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.

(c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.

18. A regulated person is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in [A.R.S. § 41-1030\(C\)](#).

19. A regulated person may allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in [A.R.S. § 41-1033](#).

20. A regulated person may file a complaint with the administrative rules oversight committee (AROC) concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in [A.R.S. § 41-1047](#).

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in [A.R.S. § 41-1048](#).

21. A regulated person may inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in [A.R.S. § 41-1091](#).

22. Unless specifically authorized by statute, a regulated person may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in [A.R.S. § 41-1002](#).

23. Each state agency that conducts audits, inspections or other regulatory enforcement actions pursuant to [A.R.S. § 41-1009](#) shall create and clearly post on the agency's website a small business bill of rights. The agency shall create the small business bill of rights by selecting the applicable rights prescribed in this section and [A.R.S. § 41-1009](#) and any other agency-specific statutes and rules. At the request of an authorized on-site representative of the regulated small business, the agency shall provide a written document of the small business bill of rights. In addition to the rights listed in this section and [A.R.S. § 41-1009](#), the agency notice of the small business bill of rights shall include the process by which a small business may file a complaint with the agency employees who are designated to assist members of the public or regulated community pursuant to [A.R.S. § 41-1006](#). The notice must provide the contact information of the agency's designated employees. The agency notice must also state that if the regulated person has already made a reasonable effort with the agency to resolve the problem and still has not been successful, the regulated person may contact the office of ombudsman-citizens aide.

Process for Contacting ADOSH Boiler Safety Regarding Inspections

Questions regarding an ADOSH Boiler Safety inspection can be directed to Randy Austin, Chief Boiler Inspector at: (602) 542-1648 or Randy.Austin@azdosh.gov.

Process for Filing a Complaint with the Commission re: ADOSH Boiler Safety

An interested person may submit a complaint concerning an ADOSH Boiler Safety matter with the Industrial Commission of Arizona. Interested parties may contact the [Office of the Director](#), Industrial Commission of Arizona at: (602) 542-4411.

Process for Filing a Complaint with the Arizona Ombudsman-Citizen's Aide

If an interested person has made a reasonable effort to resolve an ADOSH Boiler Safety issue with the Industrial Commission, and the results were unsuccessful, then you may contact the [Arizona Ombudsman Citizen's Aide](#). The Citizen's Aide can be reached at: (602) 277-7292, (800) 872-2879, or ombuds@azoca.org.