

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

Editor's Note: The Department was given an exemption to the provisions in the Arizona Administrative Procedure Act to make rules under Laws 2015, Ch. 235, § 14. Refer to the historical notes in Article 9 for more information (Supp. 15-3).

Editor's Note: The Department was given an exemption to the provisions in the Arizona Administrative Procedure Act to make or amend rules under Laws 2013, Ch. 129, § 27. Refer to the historical notes in Article 3 for more information (Supp. 15-2).

Editor's Note: 17 A.A.C. 5 was created from Sections recodified from 17 A.A.C. 4 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

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ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

- “Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.
- “Co-applicant” means an employer or potential employer.
- “Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.
- “Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.
- “Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.
- “Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.
- “Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.
- “Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.
- “Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

Department of Transportation - Commercial Programs

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2012, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

Historical Note

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3, General applicability. Paragraph (a) is amended to read:
Regulations incorporated in this section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.
- B. 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

- C. 49 CFR 390.19, Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:
A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.
- D. 49 CFR 390.23, Relief from regulations.
- Paragraph (a)(2), Local emergencies, is amended by adding:
When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.
 - Paragraph (a)(2)(i)(A) is amended to read:
An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or
- E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:
A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

Historical Note

New Section recodified from R17-4-435.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 2636, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

- A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:
Is at least 21 years of age for interstate operation or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;
- B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read:
A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

Historical Note

New Section recodified from R17-4-435.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

- A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:
"Commercial motor vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-3001.
"Conviction" has the same meaning as prescribed under A.R.S. § 28-3001.
"Disqualification" has the same meaning as prescribed under A.R.S. § 28-3001.
"Motor vehicle" has the same meaning as prescribed under A.R.S. § 28-101.
"Out-of-service order" has the same meaning as prescribed under A.R.S. § 28-5241.
"School bus" has the same meaning as prescribed under A.R.S. § 28-101.
"Tank vehicle" has the same meaning as prescribed under A.R.S. § 28-3103.
- B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.
- C. 49 CFR 383.73, State procedures.
1. Paragraph (a)(2)(vi) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence

check required by this paragraph has been made and noting the date it was done;

2. Paragraph (b)(6) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
3. Paragraph (c)(4) is amended to read:
If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.
4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.
5. Paragraph (c)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
6. Paragraph (d)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and
7. Paragraph (e)(5) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
8. Paragraph (f)(2)(ii) is amended to read:

The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c); and

9. Paragraph (m), Document verification, is amended to read:

The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.

- D. 49 CFR 383.75, Third party testing.
1. Paragraph (a)(7) is amended to read:
A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and
 2. Paragraph (a)(8)(v) is amended to read:
Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.
- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications.
1. Paragraph (b)(1) is amended to read:
A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.
 2. Paragraph (e) is amended to read:
Before a CLP or CDL may be issued:
 - a. A driver applicant must provide the driver applicant’s Social Security Number on the application of a CLP or CDL.
 - b. The state must provide the Social Security Number to the CDLIS.
 - c. The state must not display the Social Security Number on the CLP or CDL.
 3. Paragraph (h) is amended to read:
On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

Historical Note

New Section recodified from R17-4-435.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by

final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). New Section made by final rulemaking at 20 A.A.R. 2382, effective August 5, 2016 (Supp. 14-3).

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

- A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:
1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant’s limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
 2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
 - a. Average period of time the driver will be driving or on duty, per day;

- b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
- a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
4. Include a certification statement:
- a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
5. Contain signature of each applicant and date signed:
- a. The driver applicant's signature; and
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (2) shall be accompanied by:
- 1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 - 2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
 - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
- 1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 - 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
 - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
 - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
 - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

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- b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
 - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
 - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
 - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
 - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
 - ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
 - iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;
 3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
 3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
 4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
 5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if appli-

- cable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
 2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M.** The intrastate medical waiver granted by the Director under subsection (A) is:
1. Valid for a period of not more than two years from the date of issuance;
 2. Renewable 30 days prior to the expiration date; and
 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N.** An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
 2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- Q.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - a. A digital glucose monitor with computerized memory,
 - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
 - c. Insulin to be used as necessary, and
 - d. An amount of rapidly absorbable glucose to be used as necessary;
 2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
 3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
 - b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
 - c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
 - d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
 4. Participate in a diabetes education program annually;
 5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within 10 days of the date of the evaluation or exam:
 - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
 - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;

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- c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
 - d. An annual medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within two days of occurrence;
- a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100:
- 1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
 - 2. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43 within the past year.
- S.** A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
- 1. Name and complete address of the motor carrier currently employing the applicant;
 - 2. Name and complete address of the subject driver;
 - 3. Total miles driven under the current intrastate medical waiver;
 - 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 - 5. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 - 6. A current medical examination or evaluation as applicable to the medical condition:
 - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
 - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
 - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
 - 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
 - 8. Notification of any change in the type of tractor the driver will operate;
 - 9. Subject driver's signature and date signed; and
 - 10. Motor carrier co-applicant's signature and date signed (if applicable).
- T.** The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U.** The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
- 1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
 - 2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
 - 3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V.** If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

Historical Note

New Section recodified from R17-4-435.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

- A.** Incorporation of federal regulations.
- 1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2012, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.

2. The material incorporated by reference under this subsection is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- B. Application and exceptions.**
1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments.** The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined under A.R.S. § 28-5201.”

“‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”
 2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
 3. Part 177, Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings,

and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

Historical Note

New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

- A.** A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:
1. Date of the emergency situation,
 2. Time that the emergency situation started,
 3. Description of the emergency situation,
 4. Location of the emergency situation,
 5. Projected duration of the emergency situation,
 6. Authorized party’s signature for determining that an emergency situation exists,
 7. Name and contact number of responsible party in the field, and
 8. The utility’s self-generated Emergency ID or tracking number.
- B.** A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:
1. A list of drivers involved in the emergency situation;
 2. The duration of the emergency situation;
 3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
 4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.
- C.** After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final

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rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

A. Scope. This Section applies to any transporter subject to:

1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.

B. Audits.

1. The Department may conduct an audit for cause or without cause.
2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
3. The Department may inspect a motor vehicle:
 - a. Within Arizona at:
 - i. A transporter's place of business, or
 - ii. Any other in-state location, or
 - b. Outside Arizona at a transporter's place of business.
4. A transporter shall make records available for audit:
 - a. During the transporter's normal business hours, and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business, or
 - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.

C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.

D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:

1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.

E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.

F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

Historical Note

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.

1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-201 through R17-5-209; and

b. A.R.S. Title 28, Chapter 14.

2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I).

B. Initiation of proceedings, pleadings.

1. The Director shall initiate a hearing under this Section by:
 - a. Signing and serving a complaint in the form prescribed under subsection (G) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
 - b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed.
2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director's behalf through completion of an administrative proceeding under this Section.

C. Order to show cause.

1. When a complaint is served, the Executive Hearing Office shall immediately issue a summons for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office should not grant the requested relief.
2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served.
3. The parties may resolve a complaint before the hearing date.
 - a. The respondent shall file any settlement condition with the Executive Hearing Office.
 - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

D. Service.

1. The Executive Hearing Office shall:
 - a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
 - b. Maintain a proof-of-service file.
2. The date of service is the date of mailing.

E. Answer.

1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
 - a. Filing a written answer with the Executive Hearing Office; and
 - b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.
2. A respondent's written answer shall contain:
 - a. An admission or denial of each complaint allegation, and
 - b. A list of all defenses that the respondent intends to raise during the hearing.
3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.

F. Default.

1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.
2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
 - a. Consider the respondent's default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and

- b. Enter an order granting the relief requested in the Department's complaint.
3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.
- G.** Emergency motor carrier hearings; scope.
1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
 - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
 - b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
 2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
 3. The complaint and order to show cause shall contain the following:
 - a. The Department as the designated petitioner on the state's behalf;
 - b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
 - c. The relief sought by the Department; and
 - d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
 4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
 - a. Was operating on a public highway and the operation created a danger to the public safety,
 - b. Was responsible for the danger, and
 - c. Is responsible for preventing or remedying further danger to public safety.
 5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.
 6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).
- H.** Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.
- I.** A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.

Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

ARTICLE 3. PROFESSIONAL DRIVER SERVICES

R17-5-301. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 32-2351, the following definitions apply to this Article, unless otherwise specified:

"Activity" means a function or service that is provided by a licensed professional driver training school pursuant to A.R.S. Title 32, Chapter 23 or licensed traffic survival school pursu-

ant to A.R.S. Title 28, Chapter 8, Article 7.1 and that is performed by a licensed instructor or qualified instructor as defined in this Article.

"Applicant" means an individual or school, including principals, requesting in the manner set forth in this Article the issuance or renewal of a license or to become a qualified instructor under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.

"Application date" means the date the Department or private entity receives a signed application from an applicant.

"Audit" means a review of the operations, facilities, equipment, and records of a licensee under this Article, which is performed by the Department or private entity under A.R.S. § 28-3411 or 32-2352 to assess and ensure compliance with all applicable federal and state laws and rules.

"Branch" means a licensed professional driver training school's or licensed traffic survival school's business location that is an additional established place of business, but not the school's principal place of business.

"Business day" means a day other than a Saturday, Sunday, or legal state holiday.

"Business manager" means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to ensure full compliance with all applicable federal or state laws, rules, and school guidelines.

"Certificate of completion" means an electronic or paper document that is approved by the Department or private entity and that is issued by a traffic survival school or high school qualified instructor to a student who has demonstrated successful completion of a training or educational session or both conducted under this Article.

"Department-approved inventory" means educational media and related items or other resources provided and approved by the Department or private entity that are deemed necessary or useful for traffic survival school instruction, which includes curriculum, computer disks or drives, classroom training materials, instructor workbooks, instructor training manuals, or other materials, whether stored in paper or electronic formats.

"Established place of business" means a licensed professional driver training school's or licensed traffic survival school's business location that is:

- Approved by the Department,
- Located in Arizona,
- Not used as a residence, and
- Where the licensed school performs licensed activities.

"Good moral character" means a person:

Has not been convicted of a class 1 or 2 felony by a court of competent jurisdiction;

Has not within five years of application date been convicted of any other felony or misdemeanor offense having a reasonable relationship to the functions of the activity or the employment or category for which the qualification is sought;

Has not within five years of application committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence or incompetence if the act has a reasonable relationship to the person's proposed area of license or qualification;

Has not within 12 months engaged in fraud or misrepresentation in connection with an application or an exam-

ination required for license or qualification under this Chapter;

“Good standing” means an applicant:

Has not had a similar business license, qualification, or approval suspended, revoked, canceled, or denied within the previous three years of the application date;

Does not have any pending corrective action, as defined under R17-5-323, relating to a Department-issued business license, qualification, or approval;

Has not had a fingerprint clearance card required for licensure under this Article suspended, revoked, or canceled;

Does not owe delinquent fees, taxes, or unpaid balances to the Department or private entity;

Has not had any substantiated derogatory information relevant to the requested license reported to the Department about the applicant from any state agency or from any consumer protection agency contacted by the Department; or

Has not been dismissed, or resigned in lieu of dismissal, from a position for cause following allegations of misconduct having a reasonable relationship to the person’s proposed area of licensure or qualification, if the applicant is a former Department employee or a former principal or employee of a licensed professional driver training school or licensed traffic survival school.

“Immediate family member” has the same meaning as prescribed in A.R.S. § 28-2401.

“Inactivation” or “inactive” means a temporary or permanent status, assigned by the Department to a school or professional driver training school instructor previously licensed under this Article, which prohibits the school or instructor from further engaging in the previously licensed activity after the occurrence of any of the following actions:

Cancellation of license, as defined in R17-5-323;

Suspension of license, as defined in R17-5-323;

Revocation of license, as defined in R17-5-323;

Non-renewal of license; or

Relinquishment of license.

“Licensee” means a school or instructor licensed by the Department or private entity under A.R.S. § 28-3413, 32-2371, or 32-2372, and this Article, to perform a licensed activity.

“Principal” means any of the following:

If a sole proprietorship, the sole proprietor;

If a partnership, limited partnership, limited liability partnership, limited liability company or corporation, the:

Partner;

Manager;

Member;

Officer;

Director;

Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

“Principal place of business” means a licensed professional driver training school’s or licensed traffic survival school’s administrative headquarters, which shall not be used as a residence.

“Private entity” means an entity that contracts with the Department under A.R.S. § 28-3411 or 32-2352.

“Professional driver training school instructor license” means an annual license issued by the Department or private entity under A.R.S. § 32-2372, and renewable under A.R.S. § 32-2374, which authorizes a person to present specific training and educational curriculum to students as provided under this Article.

“Satisfactory driver record” means an applicant has not had within the past 39 months:

A conviction for driving under the influence, reckless or aggressive driving, racing on a highway, or leaving the scene of an accident;

A driver license previously canceled, suspended, revoked, or disqualified; and

More than three previous assignments to attend traffic survival school and no pending assignment.

“Temporary professional driver training school instructor license” means the preliminary license issued to an instructor applicant by the Director or private entity under A.R.S. § 32-2372, which authorizes the applicant to perform school activities under this Article.

“Traffic survival school qualified instructor” means an individual deemed qualified by the Department or private entity under this Article to conduct instruction of an education session on behalf of a licensed traffic survival school.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-302. Professional Driver Training School and Traffic Survival School Licensing; Eligibility and Application Requirements

- A.** An applicant for a professional driver training school or traffic survival school license, issued by the Department or private entity under A.R.S. § 28-3411 or 32-2371 and this Section, shall be at least 21 years of age and meet all applicable licensing requirements under state law and this Article when applying for an original or renewal license.
- B.** An applicant for a professional driver training school or traffic survival school license shall complete and submit to the Department or private entity an application packet that contains all of the following:
1. An application, completed on a form approved by the Department;
 2. Certification that each classroom used for the instruction of students is maintained in compliance with all applicable fire codes and local zoning ordinances;
 3. Certification that each classroom used for the instruction of students meets the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended;
 4. A copy of the following documents relating to the applicant’s business if the applicant is a:
 - a. Corporation:
 - i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and

- ii. Any other official documents, including copies of board meeting minutes and annual reports that reflect the most recent change to the corporate name, structure, or officers;
 - b. Limited liability company:
 - i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
 - ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;
 - c. Limited partnership or a limited liability partnership:
 - i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State;
 - ii. A copy, stamped "filed" by the Arizona Office of the Secretary of State, of a certificate of limited partnership, certificate of foreign limited partnership, limited liability partnership form, foreign limited liability partnership form, or statement of qualification for conversion of limited partnership or limited liability partnership; or
 - iii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State; or
 - d. Sole proprietor:
 - i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State, or
 - ii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State;
 - 5. A copy of a high school diploma or equivalent for each applicant;
 - 6. Documentation prescribed under A.R.S. § 41-1080 indicating that each applicant's presence in the United States is authorized under federal law if the applicant is an individual, a sole proprietor, or part of a general partnership;
 - 7. Payment of the license fees prescribed under A.R.S. § 28-3415 or 32-2374 for each activity requested; and
 - 8. A form, approved by the Department, completed for each branch license, if applicable, and accompanied by payment of any applicable branch license fees prescribed under A.R.S. § 28-3415 or 32-2374.
- C.** An applicant shall not use the following in any part of its school name, which are subject to approval by the Department or private entity:
- 1. The terms "Arizona Department of Transportation," "Department of Transportation," "Motor Vehicle Division," "Motor Vehicle Department," "Division of Motor Vehicles," or "Department of Motor Vehicles;" or
 - 2. The acronyms "ADOT," "DOT," "MVD," or "DMV."
- D.** Professional driver training school applicants must provide the following additional documents with the school's application packet:
- 1. A copy of the school's complete curriculum, including a sample of all written examinations and answer keys, unless the curriculum is provided by the Department or private entity;
 - 2. Verification of liability insurance coverage reflecting at least the minimum amount prescribed under A.R.S. § 32-2393 for each motor vehicle used to provide instruction; and
- 3. Diagrams detailing a minimum of three separate road skills test routes with narrative indicating all required maneuvers, if the applicant will be providing behind-the-wheel driver training.

Historical Note

New Section recodified from R17-4-512 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section amended by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-303. Professional Driver Training School Instructor Licensing; Eligibility and Application Requirements; Temporary Professional Driver Training Instructor License

- A.** An applicant for a professional driver training school instructor license shall:
- 1. Apply through a professional driver training school licensed by the Department or private entity under A.R.S. § 32-2371 and R17-5-302,
 - 2. Be at least 21 years of age,
 - 3. Be of good moral character, and
 - 4. Meet all applicable licensing requirements under state law and this Article.
- B.** Each professional driver training instructor applicant shall complete an application packet that contains the following:
- 1. An application, completed on a form approved by the Department;
 - 2. A copy of a high school diploma or equivalent;
 - 3. A copy of a valid Arizona driver license with endorsements representative of the vehicle to be used in training;
 - 4. Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;
 - 5. A motor vehicle record, dated within 30 days of the application date, which indicates that within the previous 39 months the applicant maintained a satisfactory driver record as defined in R17-5-301;
 - 6. Payment of license fees prescribed under A.R.S. § 32-2374 for each activity requested;
 - 7. Statements of positive endorsement or recommendation from at least three character references indicating each reference's:
 - a. Name,
 - b. Address,
 - c. Contact phone number and email address,
 - d. Relationship to the instructor applicant, and
 - e. Number of years associated with the instructor applicant;
 - 8. An affidavit, as provided under A.R.S. § 32-2372, from the business manager of the professional driver training school certifying that the instructor applicant:
 - a. Has the necessary skills and abilities to give instruction on driver training at a professional level, and
 - b. Has completed at least 100 hours of combined classroom and vehicle training representative of the class of vehicle appropriate to the activity; and
 - 9. A copy of the fingerprint clearance card as required of the applicant under A.R.S. § 32-2372 and R17-5-304.
- C.** A business manager of a professional driver training school licensed under A.R.S. § 32-2371 and this Article shall submit to the Department or private entity the application packet for each instructor applicant.
- D.** Temporary Professional Driver Training Instructor License. The Department or private entity shall issue a temporary professional driver training instructor license to an instructor applicant after receiving a fully completed application packet

with all of the required content and information, as provided under subsection (B).

- E. The Department or private entity may issue an annual professional driver training school instructor license to an instructor applicant, if:
 1. The applicant successfully completes the training session and examination required under R17-5-306 prior to expiration of the temporary instructor license issued under subsection (D), and
 2. The applicant is otherwise qualified under this Article and state law to receive an annual professional driver training school instructor license.
- F. The professional driver training school shall withdraw an application for a professional driver training school instructor license or the Department or private entity shall deny issuance of a license for an instructor applicant who fails to successfully complete the requirements under subsection (E) prior to expiration of the temporary professional driver training instructor license.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-304. Fingerprint Background Check; Fingerprint Clearance Card

- A. An applicant for a license issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23, Article 2 and this Article, as applicable, shall:
 1. Successfully complete a fingerprint background check conducted by the Arizona Department of Public Safety under A.R.S. § 41-1758.01, and
 2. Submit to the Department or private entity a copy of the fingerprint clearance card issued to the applicant under A.R.S. § 41-1758.03 as part of the application packet.
- B. An applicant is responsible for all costs associated with obtaining the fingerprint clearance card.
- C. A licensee, as applicable, shall maintain a valid fingerprint clearance card while licensed under this Article, and shall provide written notice to the Department or private entity within 10 calendar days if the fingerprint clearance card is cancelled, suspended, or revoked.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-305. Traffic Survival School Qualified Instructor Status; Eligibility and Application Requirements

- A. An applicant for traffic survival school qualified instructor status shall:
 1. Apply through a traffic survival school licensed by the Department or private entity under A.R.S. § 28-3413 and this Article,
 2. Be at least 21 years of age,
 3. Meet all applicable requirements under this Article, and
 4. Be of good moral character.
- B. Each traffic survival school qualified instructor applicant shall complete an application packet that contains the following:
 1. An application, completed on a form approved by the Department;
 2. A copy of a high school diploma or equivalent;
 3. A copy of a valid Arizona driver license;
 4. Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;

5. A motor vehicle record, dated within 30 days of the application date, which indicates that within the previous 39 months the applicant maintained a satisfactory driver record as defined under R17-5-301;
 6. An affidavit from the business manager of the traffic survival school certifying that the qualified instructor applicant has the necessary skills and abilities to give instruction at a professional level; and
 7. Payment of authorized fees as required by the private entity for application and administration of the instructor qualification process and for required instructor continuing education, which shall be negotiated by the Department and the private entity and shall be set forth in their contract.
- C. An applicant for instructor qualification shall have successfully completed a traffic survival school educational workshop or similar curriculum approved by the Department or private entity before being permitted to instruct any traffic survival school course.
 - D. An applicant for instructor qualification shall have successfully completed an examination given for qualification of instructors by the Department or private entity as required under R17-5-306 before being permitted to instruct any traffic survival school course.
 - E. A business manager of a traffic survival school licensed under A.R.S. § 28-3413 and this Article shall submit to the Department or private entity the complete application packet for each qualified instructor applicant.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-306. Required Training and Examination of School and Instructor Applicants

- A. An applicant for a school or instructor license or for instructor qualification under this Article shall attend Department-approved training and shall pass one or more required examinations administered by the Department or private entity before:
 1. Issuance of an applicable school or instructor license, or
 2. Approval of the status as a traffic survival school qualified instructor.
- B. The Department or private entity shall limit a professional driver training school instructor applicant to three opportunities within 90 days, based on scheduling, to successfully complete and achieve a passing score or grade on each examination required under this Section.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-307. Approval or Denial of Application; Hearing; Appeal

- A. An application will not be approved by the Department or private entity unless it is properly and fully completed with all required supporting documents and applicable fees as identified in this Article.
- B. The Department or private entity shall provide written notification to the professional driver training school or traffic survival school of the approval or denial of a license or qualification. A notice denying the applicant a license or qualification under this Article shall specify the basis for denial and indicate that the applicant may request a hearing on the denial with the Department's Executive Hearing Office within

- 30 calendar days of the date on the notice unless the application is withdrawn by the applicant.
- C.** The Department or private entity may issue a license to the school or professional driver training instructor applicant or deem a traffic survival school instructor applicant qualified when a completed application is received and the applicant has successfully completed all required training and examinations.
- D.** Unless the application is withdrawn by the applicant, the Department or private entity may deny an application in which the applicant has:
1. Failed to have or to document a satisfactory driver record as defined in R17-5-301;
 2. Failed to meet the good standing requirement of the Department as defined in R17-5-301;
 3. Failed to meet the fingerprint clearance card requirement under R17-5-304, as applicable;
 4. Made a material misrepresentation or misstatement on the application;
 5. Violated a federal or state law or rule; or
 6. Failed to complete all applicable application requirements under this Article.
- E.** If timely requested by an applicant under subsection (B), the Department shall schedule and conduct a hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5 for denial of a license.
- F.** An applicant whose application was previously denied by the Department or private entity for making a material misrepresentation or misstatement on the application is not eligible to reapply for 12 months from the date of previous denial.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-308. License Issuance; Effective Date; Expiration; Display

- A.** The Department or private entity may issue the following licenses upon determining an applicant meets all eligibility and application requirements provided under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article:
1. Professional driver training school,
 2. Professional driver training school instructor,
 3. Professional driver training school temporary instructor,
 4. Traffic survival school, and
 5. Established place of business (branch).
- B.** The Department or private entity shall license only a school that employs or contracts at least one professional driver training school instructor currently licensed under this Article or at least one currently qualified traffic survival school instructor, as applicable.
- C.** A license issued under this Article is:
1. Effective on the date of issuance;
 2. Effective until its expiration on the last day of each calendar year, except:
 - a. A temporary instructor license issued under R17-5-303 shall expire 90 calendar days from the date of issuance or shall expire immediately if the applicant fails to meet a licensing requirement under this Article,
 - b. A license subject to an active duty military extension shall expire as provided under A.R.S. § 32-4301, and
 - c. A license subject to an individual's limited length of authorized stay shall expire immediately if the individual's presence in the United States is no longer authorized under federal law; and

3. Nontransferable under any circumstances.
- D.** A licensed school shall prominently and publicly display all licenses currently in effect at the school's principal places of business.
- E.** A professional driver training school instructor shall prominently display copies of all appropriate licenses during instruction.
- F.** A school shall surrender to the Department or private entity within three business days after the date of any license inactivation, as defined under R17-5-301, all:
1. Licenses;
 2. Records pertaining to the school's operations and the training of students; and
 3. Department-approved inventory, as applicable and as defined in this Article.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-309. Renewal of License

- A.** A completed renewal packet shall be submitted to the Department or private entity a minimum of 30 calendar days prior to license expiration. Notwithstanding A.A.C. R17-1-102, failure to submit a renewal packet prior to December 1st shall result in the applicant being subject to all original licensing requirements.
- B.** A school license renewal application packet shall include:
1. A renewal application, completed on a form approved by the Department, including:
 - a. A list of all principals, contracted personnel, and employees of the school who are responsible for Arizona school operations if there have been any changes since the last renewal or original application; and
 - b. The signature of all principals on the completed application; and
 2. Payment of applicable license fees prescribed under A.R.S. § 28-3415 or 32-2374, for each activity, branch, and professional driver training school instructor.
- C.** Notwithstanding A.R.S. § 28-3415 or 32-2374, an annual license issued by the Department or private entity under this Article during the month of December shall not expire until the last day of the subsequent calendar year.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-310. Modifications of Original Application Information

- A.** A licensee or traffic survival school qualified instructor, making or learning of any change in the content of its original application information, other than ownership, shall provide written notification of the change, completed on a form approved by the Department and signed by a principal or business manager, to the Department or private entity within two business days of making the change.
- B.** A licensed school making a change to a principal or corporate structure shall submit to the Department or private entity a new application for licensing under this Article and all applicable fees, as a new applicant for licensure, within 10 calendar days of making the change.
- C.** A licensed school submitting a new application to the Department or private entity, as provided under subsection (B), is subject to the fingerprint clearance card requirement under

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R17-5-304 unless a valid fingerprint clearance card is already on file with the Department.

- D.** A licensed school shall provide written or electronic notification on a form, approved by the Department, to the Department or private entity within 10 calendar days of making any changes to the licensee's contact person, business manager, or instructors.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-311. Professional Conduct; Conflicts of Interest; Advertising

- A.** A professional driver training school or traffic survival school representative or instructor shall not:
1. Accompany a student into any Department office or office of an authorized third party driver license or driver license training provider; or
 2. Solicit an individual for any purpose on any premises rented, leased, operated, or owned by the Department or by an authorized third party driver license or driver license training provider.
- B.** A licensee or traffic survival school qualified instructor shall maintain good standing with the Department at all times while licensed or qualified under this Article.
- C.** A licensee shall not delegate or subcontract any licensed activity authorized by the Department or private entity under this Article.
- D.** The Department may take corrective action as provided under R17-5-321 and R17-5-323 if the Department or private entity determines or has reason to believe that a licensee or traffic survival school qualified instructor has demonstrated unethical conduct in the performance of official duties, including:
1. Verbally abusing, intimidating, or sexually harassing a student or potential student; or
 2. Making a false statement that is material to the activities regulated in this Article to any personnel of the Department or private entity.
- E.** A school shall use for all licensed activities and related advertising purposes only its official business name or its doing-business-as name as indicated on the license issued under this Article.
- F.** A licensee shall not represent or imply that it is the state of Arizona, the Department, the Motor Vehicle Division, or any government agency in any printed or electronic advertising or promotional material, except to the extent expressly authorized by the Department.
- G.** Licensee advertising shall not in any way:
1. Contain false, deceptive, or misleading information;
 2. Imply that the licensee can issue or guarantee issuance of a driver license or endorsement;
 3. Imply that the licensee can influence the Department or an authorized third party provider in the issuance of a driver license or endorsement;
 4. Imply that the licensee can provide any activity the licensee is not licensed by the Department or private entity to perform;
 5. Imply that preferential or advantageous treatment by the Department can be obtained; or
 6. Use or contain a term prohibited under R17-5-302(C).
- H.** A school licensed by the Department or private entity under this Article may state in its advertising that it is "licensed" by the Department, but shall not indicate that the school is approved, sanctioned, or in any other way endorsed or recommended by the Department.

- I.** All printed or electronic advertising or promotional material used, issued, or published by a licensee must be pre-approved by the Department or private entity.
- J.** An instructor, in any official capacity as an instructor or for compensation, shall not provide any classroom instruction or skills training for an immediate family member or a principal or employee of any school that employs the instructor.
- K.** A full-time employee of the state of Arizona shall not receive any direct pecuniary payments from any fees paid by those who attend a licensed school.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-312. Cancellation and Continuity of Services to Participants

- A.** A principal of a school ceasing operations or cancelling courses for any reason shall ensure continuity of services to each student currently enrolled in courses as follows:
1. A principal shall notify each student currently scheduled for, or enrolled in, a course that the school will be unable to provide the services previously offered 72 hours before the scheduled course; and
 2. A principal shall refund within four business days any payment received by the school for a course not yet provided.
- B.** A principal of a school ceasing operations shall provide to the Department or private entity, upon request, a written list of all students notified under subsection (A) with an explanation of the final resolution reached as a result of the principal's contact with the student.
- C.** A principal's failure to provide continuity of services to enrolled students as provided under this Section may result in the loss of the principal's status of good standing with the Department.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-313. Method of Instruction; Curriculum

- A.** A licensed or qualified instructor shall teach only curriculum approved by the Department or private entity to a student attending a class.
- B.** A licensed or qualified instructor shall not conduct personal business during a time designated for instruction.
- C.** An instructor shall not solicit students during training classes for businesses other than those licensed by the Department or private entity.
- D.** A school or instructor shall ensure that a student has both fully attended and successfully completed a course before issuing a certificate of completion to the student.
- E.** A licensed traffic survival school must use all equipment required by the Department or private entity to present the curriculum to the students, including at a minimum, a computer, a PowerPoint compatible projector, a DVD player, and a display monitor visible to all students.
- F.** Professional driver training school approved curriculum. The Department shall approve, and may modify, in writing, a uniform curriculum that the professional driver training school shall teach as applicable for each activity the licensee is authorized to perform. The curriculum shall be a standard course of instruction used by a professional driver training school for the training and education of students.

- G.** Traffic survival school approved curriculum. The Department shall approve, and may modify, in writing a uniform curriculum that the traffic survival school shall teach. The curriculum shall be selected and approved on the basis of effectiveness in improving the safety and habits of drivers.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-314. Certificate of Completion

- A.** A qualified instructor for traffic survival school or high school driver education program shall accurately complete all required information on a certificate of completion:
1. The instructor providing the training listed on the certificate of completion shall sign the document once training is complete, or
 2. The instructor providing the final instruction or test shall sign the certificate of completion if training is provided by multiple instructors.
- B.** A qualified instructor shall provide a certificate of completion to the student at the conclusion of the course. A traffic survival school qualified instructor shall print the certificate of completion from the web site of the Department's private entity or the Department's web site, as applicable.
- C.** A high school qualified instructor shall not make a correction to a certificate of completion. If an error is made, the high school qualified instructor shall:
1. Void the certificate of completion,
 2. Write the word "VOID" or "VOIDED" clearly on the face of each voided certificate of completion, and
 3. Issue a new certificate of completion.
- D.** The Department may elect not to accept a certificate of completion that contains an alteration, erasure, correction, or illegible information.
- E.** A school or qualified instructor shall not withhold timely issuance of a certificate of completion due to a payment dispute between the school and the student.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-315. Record Retention

- A.** A licensed traffic survival school shall electronically transmit proof of course completion to the Department immediately following each student's satisfactory completion of a traffic survival school course in a manner and with the basic computer equipment prescribed by the Department or private entity. At a minimum, the computer equipment must be able to temporarily store, and electronically transmit over the internet, the certificates of completion required by the Department or private entity.
- B.** All records pertaining to a licensed school's operations and training of students shall be:
1. Stored and securely maintained at the licensee's principal place of business,
 2. Available for inspection by the Department or private entity during business hours, and
 3. Retained by the school for three years from the date of course completion.
- C.** A licensed school shall establish and maintain separate records for each authorized activity.
- D.** A licensed school shall maintain, for three years, attendance records for each class conducted.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-316. Traffic Survival School Department-Approved Inventory

- A.** A traffic survival school licensed under this Article shall:
1. Prohibit public or other unauthorized access to all Department-approved inventory, and
 2. Submit to the Department or private entity a written report detailing the circumstances surrounding the loss or theft of any missing or stolen Department-approved inventory.
- B.** A licensee shall use only Department-approved inventory.
- C.** A school principal or business manager shall submit to the Department or private entity a written or electronic request for any additional Department-approved inventory the school may require.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-317. School Responsibilities

While licensed by the Department or private entity under A.R.S. § 28-3413 or 32-2371 and this Article, the school shall:

1. Comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and applicable federal regulations by providing appropriate auxiliary aids and services to students with disabilities requesting reasonable accommodation;
2. Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and applicable federal regulations. As a requirement of compliance, the school shall:
 - a. Provide public notification of its compliance with Title VI by displaying a Department-approved notice to the public;
 - b. Take reasonable steps to ensure that Limited English Proficient (non-English speaking) customers have meaningful access to the services or activities performed under this Article, which includes, providing the school's services and authorized transactions in languages other than English and providing these services at no additional cost to the customer or student;
 - c. Report promptly any customer complaints alleging discrimination or failure to meet the requirements of this Section to the Department's Civil Rights office for processing and investigation. The school shall immediately upon receipt of such complaints provide access to its facilities, books, records, accounts, and other sources of information as may be determined or requested by the Department to be pertinent, in order to ascertain compliance with Title VI; and
 - d. Inform and formally train all school officers, principals, employees, and contractors on the requirements to comply with Title VI; and
3. Provide written notice to the Department or private entity within twenty-four hours if the driver license of any of the school's principals, managers, or instructors is suspended, revoked, cancelled, or disqualified.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

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ber 1, 2015 (Supp. 15-2).

R17-5-318. Instructor Responsibilities

While licensed or qualified by the Department or private entity under A.R.S. § 32-2372 and this Article to give instruction, an instructor shall:

1. Attend all ongoing training and continuing education as required by the Department or private entity;
2. Provide written notice to the licensed professional driver training school or traffic survival school within twenty-four hours if the instructor's driver license is suspended, revoked, cancelled, or disqualified;
3. Conduct training and courses only at training sites and on driver road training routes approved by the Department or private entity;
4. Follow and complete the curriculum approved by the Department or private entity for each course conducted; and
5. Conduct at least two courses in a calendar year.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-319. Traffic Survival Schools

- A. The Department shall assign an individual only to a traffic survival school licensed by the Director under this Article.
- B. A traffic survival school or qualified instructor shall allow only students who provide acceptable proof of traffic survival school assignment to register for and attend a traffic survival school course. The following documents are acceptable proof of assignment:
 1. Notice of traffic survival school assignment or suspension for failure to attend traffic survival school,
 2. An order from a court or other appropriate tribunal from Arizona or another state indicating traffic survival school assignment,
 3. Traffic survival school proof of assignment form obtained from the Department,
 4. Electronic verification of traffic survival school assignment through the Department's private entity, or
 5. Motor vehicle record.
- C. On enrollment of a student in, or on a student's attendance of, a traffic survival school course, a licensed traffic survival school shall collect the statutory enrollee fee provided in A.R.S. § 28-3411, unless the student has paid the enrollee fee in advance. The licensed traffic survival school also shall collect the records fee prescribed by A.R.S. § 28-446, if applicable, before the student attends the traffic survival school course. The licensed traffic survival school shall fully remit these fees to the private entity within four business days after a student completes the traffic survival school course. If a licensed traffic survival school does not timely remit the enrollee fees, the Department or private entity may notify the traffic survival school that its prospective future students will be required to prepay the enrollee fees until remittances are current. The amount of the enrollee fee charged by the private entity shall be negotiated by the Department and the private entity and shall be set forth in their contract.
- D. A traffic survival school or qualified instructor shall not:
 1. Conduct courses with a number of students in excess of the classroom's fire safety capacity reported to the Department or private entity by the licensee under R17-5-321;
 2. Conduct courses with more than 30 students per qualified instructor;

3. Exclude a translator, the Director, the private entity, or Department personnel from attending courses;
 4. Issue a certificate of completion to a student who has not fully completed the required curriculum; or
 5. Issue a certificate of completion for a student whom the instructor did not personally instruct.
- E. A licensee shall retain for three years all copies of the student's acceptable proof of assignment and the signed class roster of attending students.
 - F. The private entity may develop and administer a web site that allows individuals who are assigned to traffic survival school to locate and enroll online in traffic survival school courses.
 - G. Only an individual who meets the qualifications under R17-5-305, remains in compliance with this Article, and who is granted and retains traffic survival school qualified instructor status, may be allowed to teach individuals assigned by the Department to attend a licensed traffic survival school.
 - H. A licensed traffic survival school must hold at least one course every 60 days at the school's established place of business and each branch, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-320. High School Driver Education Program

- A. The following definitions apply to this Section:
 1. "Accountable forms inventory" means a series of distinctly and consecutively numbered documents provided by the Department to an instructor qualified under this Section for:
 - a. Recording in a log, the assigned number of each document completed, issued, or voided by a high school qualified instructor; and
 - b. Reporting to the Department the assigned number of each document completed, issued, or voided by a high school qualified instructor.
 2. "Certified instructor report" means a report prepared and certified monthly by each high school qualified instructor listing all certificates of completion that were issued and voided.
- B. The Department shall cooperate with the Arizona Department of Education, under A.R.S. §§ 28-3174 and 32-2353, to enable the issuance of a certificate of completion to a regularly enrolled full-time student as part of a high school driver education program.
- C. The Director or private entity shall qualify an instructor approved by the Arizona Department of Education to issue a certificate of completion.
- D. A high school qualified instructor may issue a certificate of completion to a regularly enrolled full-time student who:
 1. Successfully completes the classroom course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's written test; or
 2. Successfully completes the skills course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's skills test.
- E. A high school qualified instructor shall submit to the Department, no later than the fifth day of each month, all certified instructor reports and certificates of completion issued by the school during the preceding month. A high school qualified instructor who does not issue any certificates of completion during the preceding month shall submit to the Department a certified instructor report indicating "no activity."

- F.** A high school qualified instructor shall provide the status of certificates of completion to the Department, upon request, by identifying the certificates by number as either issued, not issued, lost, or stolen.
- G.** A high school representative shall promptly return all unused or un-issued certificates of completion to the Department, upon request.
- H.** A certificate of completion constitutes accountable forms inventory to be secured at all times by the high school qualified instructor or other designee of the high school and any misuse, fraud, or negligence by a high school qualified instructor involving the form in consultation with the Arizona Department of Education pursuant to A.R.S. § 28-3174 may lead to Department disqualification of the instructor's authorization to issue the form.
- I.** A high school qualified instructor shall submit to the Department all reports required under this Article by regular mail, certified mail, registered mail, electronic mail, or personal delivery. The following dates shall be used to determine whether a report was received within the required timeframes established under this Section:
1. For regular mail, the postmark date;
 2. For certified or registered mail, the date of receipt by the designated delivery service;
 3. For electronic mail, the send date; and
 4. For personal delivery, the Department's time and date stamp of receipt.
- J.** If a high school qualified instructor fails to timely or accurately submit to the Department a certified instructor report required under this Section, the Department may initiate corrective action. The Department may:
1. Provide an oral or written warning for a first untimely or inaccurate report,
 2. Send a letter of concern for a second untimely or inaccurate report in a 12-month period, and
 3. Request that the Arizona Department of Education disqualify a high school qualified instructor from issuing a certificate of completion under this Article for a third untimely or inaccurate report in a 12-month period.
- K.** A high school shall develop and maintain a driver education class training record for each student, which shall include at least the following information:
1. Student's name;
 2. Student's phone number;
 3. Student's driver license or instruction permit number and its expiration date;
 4. Fee amounts collected for any related services;
 5. Date, type, and duration of all classroom lessons and practical instruction;
 6. Make, model, and license plate number of any motor vehicle used to conduct training, as applicable;
 7. Date and results of all tests administered;
 8. Number of certificates of completion issued; and
 9. Name and Department-issued number of each instructor who conducted a lesson or test.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-321. Periodic Audits, Monitoring, Inspections, and Investigations

- A.** To determine compliance with license requirements, qualification requirements and applicable federal and state laws and rules, the Department or private entity may:
1. Monitor for compliance by attending any licensed school's course or other activities on a scheduled or unscheduled basis;
 2. Audit for compliance by performing periodic reviews of the operations, facilities, equipment, and records;
 3. Inspect for compliance by making random, on-site visits during posted business hours; or
 4. Investigate for compliance by interviewing or submitting questions to school owners, instructors, and former or current students.
- B.** Failure of a school or instructor to allow or cooperate in an audit, monitoring, inspection, or investigation may result in the Department issuing an immediate cease and desist order or requesting a hearing for suspension or revocation of a license issued under this Article.
- C.** During an audit, monitoring, inspection, or investigation of a licensee, the Department, the private entity, a law enforcement agency, or employee of the Federal Motor Carrier Safety Administration may:
1. Review and copy paper and electronic records;
 2. Examine the licensee's principal and established place of business, all branches, training, or road training sites; and
 3. Interview the school's employees, instructors, and customers.
- D.** A licensee shall make records available for audit, monitoring, inspection, or investigation at the licensee's principal place of business.
- E.** After an audit or monitoring, the Department or private entity shall send a report of the results in writing to the school.
- F.** If instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department or private entity may determine if either of the following actions is required:
1. An informal meeting to discuss findings, or
 2. A written compliance plan addressing findings.
- G.** If greater instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department may determine if either of the following actions is required:
1. A probationary period; or
 2. A request for a hearing to cancel, suspend, or revoke a license to operate a school or conduct instruction under this Article.
- H.** The Department or private entity may issue a notice of corrective action to a licensee if the licensee fails to comply with a warning letter, with an audit, inspection or investigation request, a monitoring request, or with written findings provided by the Department or private entity. Only the Department may initiate a corrective action provided under subsection (G).
- I.** Each site used by a school as an office, training location, or classroom location shall:
1. Be inspected and approved by the Department or private entity prior to initial use or relocation,
 2. Be licensed by the Department or private entity, and
 3. Have office hours displayed in a conspicuous location at each site open to the public during the posted hours.
- J.** There shall be a clearly defined and visible separation between a school and any other business if a professional driver training school or traffic survival school is located in an office building, store, or other physical structure shared with any other business or enterprise.
- K.** Any request by a school for inspection and approval of a site on a recognized Indian reservation shall contain the written permission of the appropriate Tribal authority.

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- L. Any request by a school for inspection and approval of a site on a military base shall contain the written permission of the appropriate military authority.
- M. A school shall submit to the Department or private entity a copy of the written lease or contract agreement or deed of ownership, if the site is owned by the school, for each site, as applicable.
- N. Any request by a traffic survival school for inspection and approval of a site to be used for educational sessions shall include the approved fire safety capacity of the classroom(s) at that site and shall be signed by a principal of the traffic survival school.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-322. Cease and Desist Order; Hearing and Appeal

- A. The Department may immediately issue and serve a cease and desist order on a licensee, as prescribed under A.R.S. § 28-3417 or 32-2394, if the Department or private entity has reasonable cause to believe that the licensee has violated or is violating a federal or state law or rule relating to a duty prescribed under this Article.
- B. A cease and desist order issued by the Department to a licensee under this Article shall:
 - 1. Require the person on receipt of the order to cease and desist from further engaging in the prohibited conduct or in any activity authorized under this Article as specified in the cease and desist order, and
 - 2. Provide information regarding the person's right to request a hearing to show cause as to why the Department's order should not be upheld.
- C. On failure or refusal of a licensee to comply with a cease and desist order, or after a requested hearing, the Department may cancel, suspend, or revoke the license of the licensee under A.R.S. § 28-3416 or 32-2391 and R17-5-323.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-323. Non-compliance; Notice of Corrective Action; Cancellation, Suspension, or Revocation of a Professional Driver Training School or Instructor License or Traffic Survival School License; Hearing and Appeal

- A. The following definitions apply to this Section:
 - 1. "Cancellation" means a Department action that withdraws a license issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
 - 2. "Revocation" means a Department action that terminates, for an indefinite period of time, a licensee's privilege to operate a school or conduct instruction under this Article.
 - 3. "Suspension" means a Department action that prohibits, for a stated period of time, a licensee from operating as a school or instructor under this Article.
- B. The Department or private entity may initiate corrective action on a licensee or a traffic survival school qualified instructor as provided under A.R.S. Title 28, Chapter 8, Article 7.1, Title 32, Chapter 23, Article 3, or Title 41, Chapter 6, Article 6, and this Article, if satisfactory evidence shows that a licensee or traffic survival school qualified instructor, individually or collectively:
 - 1. Violated a federal or state law or rule relating to a duty prescribed under this Article;
 - 2. Failed to maintain a status of good standing as defined under R17-5-301; or
 - 3. Provided false, deceptive, or misleading information to the Department or private entity in either an application or in response to an audit or inspection conducted pursuant to R17-5-321.

- C. Corrective action initiated under subsection (A), depending on the severity or number of violations, may result in an action by the Department to impose a term of probation; issue a cease and desist order under A.R.S. § 28-3417 or 32-2394; or request a hearing to cancel, suspend, or revoke an existing license under A.R.S. § 28-3416 or 32-2391.

- D. A notice of corrective action issued by the Department requesting a hearing to cancel, suspend, or revoke an existing license shall include:
 - 1. The grounds for the Department's action and its request for a hearing before the Department's Executive Hearing Office; and
 - 2. A brief written statement of the hearing and appeal rights for the cancellation, suspension, or revocation of a professional driver training school or instructor license or a traffic survival school license, as provided under A.R.S. § 28-3416 or 32-2391.

- E. A notice of corrective action issued by the Department to cancel, suspend, or revoke an existing qualification of a traffic survival school instructor shall include:
 - 1. The grounds for the Department's action; and
 - 2. A brief written statement of the hearing and appeal rights for the cancellation, suspension, or revocation of the qualification of a traffic survival school instructor, as provided in A.R.S. §§ 41-1001(12) and 41-1064.

- F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

ARTICLE 4. DEALERS**R17-5-401. Reserved****R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses**

- A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
 - 1. \$100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
 - 2. \$25,000 from a wholesale motor vehicle dealer,
 - 3. \$25,000 from a wholesale motor vehicle auction dealer,
 - 4. \$25,000 from a motor vehicle broker, and
 - 5. \$20,000 from an automotive recycler.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

Historical Note

New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

- A. As prescribed under A.R.S. § 28-5005, the Division shall require a \$25,000 bond for a motor vehicle title service company applying for a business license.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

R17-5-404. Dealer Title Requirement for Vehicle Sale

For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

Historical Note

New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section heading corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

R17-5-405. Motor Vehicle Dealer Acquisition Contract

- A. Definitions.
1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).
 2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).
 3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
 4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
 5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
 6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
- B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a form with contents as prescribed under subsection (C).
- C. Content. A dealer acquisition contract shall contain the following information:
1. The heading "Dealer Acquisition Contract;"
 2. The dealer's name and dealer license number;
 3. The dealer's business address and telephone number;
 4. The owner's name, address, and telephone number;
 5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
 6. If there is a lien holder:
 - a. The lien holder's name, address, telephone number;
 - b. Lien balance;
 - c. Prepayment penalties, if any; and
 - d. Other information relevant to the terms and conditions of the lien repayment;
 7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (C)(6)(b);
 8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another vehicle;
 9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
 10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of

the lien balance and assure that the balance is paid and the lien is released;

11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
 12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
 13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
 14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
 15. The date the contract is executed;
 16. The dealer's signature; and
 17. The owner's signature.
- D. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
- E. Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the vehicle is sold.
- F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-406. Motor Vehicle Dealer Consignment Contract

- A. Definitions.
1. "Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).
 2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).
 3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
 4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
 5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
 6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
- B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection (C).
- C. Content. A dealer consignment contract shall contain the following information:
1. The heading "Dealer Consignment Contract;"
 2. The dealer's name and dealer license number;
 3. The dealer's business address and telephone number;
 4. The owner's name, address, and telephone number;

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5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
 6. If there is a lien holder:
 - a. The lien holder's name, address, telephone number;
 - b. Lien balance;
 - c. Prepayment penalties, if any; and
 - d. Other information relevant to the terms and conditions of the lien repayment;
 7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the lien balance is no greater than that disclosed under subsection (C)(6)(b);
 8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
 9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
 10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
 11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
 12. The expiration date of the consignment contract;
 13. An agreement by the dealer to deliver the vehicle to the owner at a specified location on the date that the contract expires or terminates;
 14. An agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
 15. The date the contract is executed;
 16. The dealer's signature; and
 17. The owner's signature.
- D.** A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
- E.** Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the vehicle is sold.
- F.** Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-407. Motor Vehicle Repossession

- A.** The Division shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:
1. The vehicle is physically located in this state;
 2. A notice of lien is filed with the Division;
 3. A completed affidavit from the lienholder is submitted to the Division stating that the vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
- 4.** In addition to the information required in subsection (A)(3), the affidavit contains the following information:
- a. The Vehicle Identification Number (VIN),
 - b. The vehicle model year,
 - c. The vehicle make,
 - d. The registered owner's name,
 - e. The date of repossession,
 - f. The state in which the vehicle is titled,
 - g. The lienholder company name,
 - h. The lienholder agent or representative name,
 - i. Lienholder signature, and
 - j. Notary or Motor Vehicle Division agent signature.
- B.** The Division shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3) and (4) and subsection (C) if all of the following apply:
1. The affidavit is submitted by an Arizona licensed dealer, and
 2. The Arizona licensed dealer is transferring the title into the dealership's name.
- C.** A lienholder may sell a repossessed vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Division. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:
1. The buyer's name;
 2. The sale date;
 3. Buyer's street address, including the city, state, and zip code;
 4. Name of new lienholder, if applicable;
 5. New lien date, if applicable;
 6. Odometer certification statement, including odometer reading, and an area for the buyer's name and signature to acknowledge the odometer certification;
 7. A statement that the buyer is aware of the odometer certification made by the seller;
 8. The seller's name;
 9. The seller's notarized signature;
 10. The seller's address, including city, state, and zip code; and
- D.** A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.
- E.** Disclaimer. The Division has no responsibility relating to foreclosure on real property under A.R.S. Title 33, Chapter 7.

Historical Note

New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3).

R17-5-408. Resale of a New Motor Vehicle

- A.** A new motor vehicle dealer, as defined in A.R.S. § 28-4301, that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).
- B.** A dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
1. The name of the dealership;
 2. A vehicle description, including year, make, and vehicle identification number (VIN);
 3. A statement that the vehicle was delivered to a previous purchaser;
 4. The printed name of the new purchaser; and

5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.
- C.** The new motor vehicle dealer shall:
1. Provide a copy of the notice under subsection (B) to the new purchaser, and
 2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.
- D.** The new motor vehicle dealer is not required to submit to the Division the notice under subsection (B) unless otherwise required by state or federal law.
- E.** A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter, the intent of the provisions specified in subsection (B).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1).

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY**R17-5-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

"Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.

"Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.

"Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-502. Repealed**Historical Note**

New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-503. Repealed**Historical Note**

New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception

- A.** If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and Article 8 of this Chapter, the person or motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A):

1. On initial motor vehicle registration, or

2. On written request by the Department.

- B.** An insurance company, its managing general agent, broker, or agent may submit proof of financial responsibility to the Department on behalf of a person or motor carrier.
- C.** As proof of financial responsibility, a person or motor carrier shall submit to the Department a photocopy of:
1. A valid liability insurance policy;
 2. A binder dated within 90 days of filing with the Department;
 3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the agency;
 4. A completed and signed Certificate of Liability Insurance form, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the certificate holder; or
 5. A certificate of self-insurance issued by the Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.
- D.** Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
1. A binder from an insurance company other than the insurance company named in the first binder; or
 2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (5).
- E.** A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

Historical Note

New Section recodified from R17-4-445 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-505. Repealed**Historical Note**

New Section recodified from R17-4-446 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

R17-5-506. Repealed**Historical Note**

New Section recodified from R17-4-447 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Repealed by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-507. Repealed**Historical Note**

New Section recodified from R17-4-448 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS

R17-5-601. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-1301, in this Article, unless the context otherwise requires, the following terms apply:

“Alcohol” means ethyl alcohol, also called ethanol.

“Alcohol concentration” means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

“Alveolar breath sample” means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

“Anticircumvention feature” means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

“Authorized installer” means a person or entity appointed by a manufacturer, and certified by the Department, to install and service a certified ignition interlock device model provided by the manufacturer.

“Breath alcohol test” means analysis of a sample of the participant’s expired alveolar breath to determine alcohol concentration.

“Business day” means a day other than a Saturday, Sunday, or state holiday.

“Calibration” means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

“Cancellation” means the withdrawal of a certification granted by the Department under this Article, which prohibits a previously certified ignition interlock device manufacturer, its authorized installer, or the authorized installer’s service center from offering, installing, or servicing an ignition interlock device under Arizona law.

“Certification” means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer, an authorized installer, or an authorized installer’s service center to offer, install, or service an ignition interlock device under Arizona law.

“Corrective action” means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a participant’s driving privilege and the usage or discontinuation of usage of a certified ignition interlock device, or an action that the Department takes in relation to the performance of the duties of a manufacturer or an installer in Articles 6 or 7 of this Chapter to deny or cancel manufacturer or installer certification.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person’s driver license or non-operating identification license number.

“Data storage system” means a computerized recording of all events monitored by an installed ignition interlock device, which may be reproduced in the form of specific reports.

“Emergency bypass” means an event that permits a vehicle equipped with an ignition interlock device to be started with-

out requiring successful completion of a required breath alcohol test.

“Emergency situation” means a circumstance in which the participant declares to the installer that the vehicle needs to be moved to comply with the law or the participant has a valid and urgent need to operate the vehicle.

“Established place of business” means a business location that is:

Approved by the Department;

Located in Arizona;

Not used as a residence; and

Where a manufacturer’s authorized installer performs authorized activities.

“False sample” means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the participant.

“Filtered breath sample” means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

“Fixed-site service center” means a permanent location operated by an installer for conducting business and providing services related to a certified ignition interlock device.

“Free restart” means a function of a certified ignition interlock device that will allow a participant to restart the vehicle, under the conditions provided in R17-5-603, without completing another breath alcohol test.

“Ignition interlock period” means the period in which a participant is required to use a certified ignition interlock device that is installed in a vehicle. “Improper reporting” means any of the following:

Failure of a manufacturer or its authorized reporting installer to report any violations to the Department within 24 hours as required in R17-5-610(D)(2), or failure to send participant ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(B)(1);

Failure of a manufacturer or its authorized reporting installer to provide copies of participant certified ignition interlock device records to the Department within 10 days after the Department’s request;

Failure of a manufacturer or its authorized reporting installer to provide quarterly reports as required in accordance with the schedule prescribed in R17-5-612(B);

Failure of a manufacturer or its authorized reporting installer to screen and remove invalid or unsubstantiated reporting data from a participant’s ignition interlock reporting records prior to submitting these reporting records to the Department;

Failure of a manufacturer or its authorized reporting installer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing an accuracy and compliance check, that results in the Department mailing a driver license suspension to a driver;

Electronic reporting by a manufacturer or its authorized reporting installer to the Department of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

An incident that occurs when a participant’s vehicle has high or low voltage;

An incident that occurs when a participant has a free restart test to start the participant's vehicle;

An incident that occurs in which an installer downloads data from the device during an accuracy check and tampers with a certified ignition interlock device; or

An incident that occurs after the participant's vehicle is turned off.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013.

"Installer-certified service representative" means any individual who has successfully completed all requirements under R17-5-705, and has received certification from an installer to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a specific certified ignition interlock device.

"Lock-out condition" means the operational status of a certified ignition interlock device, which after recording any violation of A.R.S. Title 28, Chapter 4, Article 5, immobilizes a participant's vehicle by disallowing further operation of the device. The lock-out feature is built into a certified ignition interlock device through manufacturer software or firmware, and once activated, the device must be re-set by the manufacturer's authorized installer.

"Manufacturer's authorized representative" means an individual or entity designated by a manufacturer to represent or act on behalf of the manufacturer of a certified ignition interlock device.

"Material modification" means a change to a certified ignition interlock device that affects the functionality of the device.

"Missed rolling retest" means the participant refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period described in R17-5-610(H).

"Mobile service center" means the portable operation of an installer, whether contained within a vehicle or temporarily erected at a publicly accessible commercial location, including a kiosk, which includes all personnel and equipment necessary for an installer to conduct certified ignition interlock device related business and services, separately and simultaneously, with its parent fixed-site service center.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26867, May 8, 2013.

"Participant" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning certified ignition interlock device and who becomes a customer of an installer for installation and servicing of the certified ignition interlock device.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the startup set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or a manufacturer's authorized

installer that is located in Arizona and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Reference sample device" means a device containing a sample of known alcohol concentration.

"Retest set point" has the same meaning as startup set point.

"Rolling retest" means an additional breath alcohol test required of the participant at random intervals after the start of the vehicle that is in addition to the initial test required to start the vehicle.

"Service center" means a certified ignition interlock device service center operated by an installer and considered an installer under this Section, who meets and maintains all Department certification and inspection requirements under R17-5-707, whether operated on a fixed-site or mobile.

"Startup set point" means the alcohol concentration value, established by the Department under R17-5-603(A), which is determined by the Department to be the point at which, or above, a certified ignition interlock device shall disable the ignition of a motor vehicle.

"Violation" includes, but is not limited to any of the following reportable activities performed by a participant against whom the Department shall take corrective action against the participant's driving privilege:

Tampering with the certified ignition interlock device as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the certified ignition interlock device under A.R.S. § 28-1461(E)(4);

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E) if the participant is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the startup set point if the participant is under 21 years of age;

Refusing or failing to provide any set of four valid and substantiated breath samples in response to a requested rolling retest during a participant's ignition interlock period; or

Disconnecting or removing a certified ignition interlock device, except:

On receipt of Department authorization to remove the device;

On repair of the vehicle, if the participant provided to the manufacturer, installer, or service center advanced notice of the repair and the anticipated completion date; or

On replacement of one vehicle with another vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Violation reset" means the unplanned servicing of a certified ignition interlock device and the downloading of information from its data storage system by a service center when required as a result of an over-accumulation of violations.

Historical Note

New Section recodified from R17-4-709 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3499, effective December

1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration; Cancellation of Certification; Notice

- A.** An ignition interlock device manufacturer shall obtain certification by the Department under this Article before offering an ignition interlock device model for installation under Arizona law.
- B.** After receiving Department certification for an ignition interlock device model and meeting all the requirements under R17-5-604, the ignition interlock device manufacturer is effectively certified by the Department to offer its certified ignition interlock device model for installation under Arizona law.
- C.** An ignition interlock device manufacturer shall submit a new application to the Department under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.
- D.** Manufacturer certification issued by the Department under this Article shall automatically expire if:
1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
 2. The manufacturer has no pending application on file with the Department for the certification of a device under R17-5-604.
- E.** If the Department determines that a reporting manufacturer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the authorized reporting manufacturer with the following information:
1. The name of the participant and the date of the improper reporting; and
 2. The reporting manufacturer shall send the required record or report to the Department within ten business days, if applicable.
- F.** If the reporting manufacturer fails to remedy the issues identified in the notice within ten business days, the Department may cancel the manufacturer device certification.
- G.** If the Director cancels a manufacturer's device certification, the Director shall notify each participant with the manufacturer's certified ignition interlock device that the participant has 30 days to obtain another installer.
- H.** After the one-year cancellation period ends, a manufacturer may reapply to the Department for certification by completing a new application for the certification of a device and meeting all certification requirements under this Article.
- I.** If a manufacturer's certification expires as a result of subsections (D)(1) and (D)(2), the manufacturer may reapply for certification by submitting a new application to the Department for the certification of a device under R17-5-604.

Historical Note

New Section recodified from R17-4-709.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-602 renumbered to R17-5-604; new R17-5-602 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

- A.** The startup set point value for a certified ignition interlock device shall be an alcohol concentration of 0.020 g/210 liters of breath. The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters. The accuracy shall be deter-

mined by analysis of an external standard generated by a reference sample device.

- B.** A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C.** A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D.** All devices, including those with cameras, shall meet the requirements of subsection (A) when used at ambient temperatures of -20° Celsius to 83° Celsius.
- E.** A device shall be designed so that anticircumvention features will be difficult to bypass.
1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of cheating by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
 2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F.** A device shall:
1. Allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test.
 2. Automatically purge alcohol before allowing analysis.
 3. Have a data storage system with the capacity to sufficiently record and maintain a record of the participant's daily driving activities that occur between each regularly scheduled accuracy and compliance check referenced under R17-5-610 and R17-5-706. A manufacturer or its authorized installer shall download any digital images taken during a participant's accuracy and compliance check. A manufacturer or its authorized installer shall make these digital images available to the Department on request.
 4. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute, and the manufacturer's software and firmware:
 - a. Shall require device settings and operational features to include, but are not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lock-out conditions; and
 - b. Shall not allow modification of the device settings or operational features by a service center or service representative unless the Department approves the modification under subsection (G).
 5. Record all emergency bypasses in its data storage system.
 6. Require a participant to perform a rolling retest within five to 15 minutes after the initial test required to start an engine, and the device shall continuously require additional rolling retests at random intervals of up to 30 minutes after each previously requested retest as follows:
 - a. A device shall emit a warning light, tone, or both, to alert a participant that a rolling retest is required.
 - b. A device shall allow a period of six minutes after the warning light, tone, or both, to allow a participant to take a rolling retest.
 - c. A device shall require a participant to perform a new test to restart an engine if it is inadvertently switched off during or after a rolling retest warning.
 - d. A device shall use the startup set point value as its retest set point value.
 - e. A device shall record, in its data storage system, the result of each rolling retest performed by a partici-

- part during the participant's ignition interlock period and any valid and substantiated missed rolling retests; and
- f. A device shall immediately require another rolling retest each time a participant refuses to perform a requested rolling retest.
 7. Until a participant successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the participant to perform the requested rolling retest.
 8. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, emit a unique cue, either auditory, visual, or both, to warn a participant that the device will enter into a lock-out condition in 72 hours unless reset by the installer.
 9. When a violation results in a lock-out condition, the device shall:
 - a. Immobilize the participant's vehicle;
 - b. Uniquely record the event in the data storage system; and
 - c. Require a violation reset by the installer.
- G.** No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
 2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
 3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires a modification that may affect the operational concept of a device, the manufacturer shall immediately notify the Department.

Historical Note

New Section recodified from R17-4-709.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-603 renumbered to R17-5-606; new R17-5-603 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-604. Ignition Interlock Device Certification; Application Requirements

- A.** A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
 - B.** For certification of an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
 1. The manufacturer's name;
 2. The manufacturer's principal place of business in this state, established places of business in this state, and telephone numbers;
 3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
 4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
 6. The following statements, signed by the manufacturer's authorized representative and acknowledged by a notary public or Department agent:
 - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
 - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
 - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or its authorized installer relating to the installation and operation of the ignition interlock device; and
 - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
 - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
 - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C.** A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
 2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
 3. An independent laboratory's report that:
 - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013. The NHTSA specifications are incorporated by reference and are on file with the Department and the NHTSA Office of Research and Technology (NTS-131), 400 7th St. S.W., Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
 - b. Provides the independent laboratory's name, address, and telephone number; and
 - c. Provides the name and model number of the ignition interlock device tested.
 4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3) and acknowledged by a notary public or Department agent, that states:
 - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists;
 - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013.

- c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format for Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013;
- d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device; and
- e. The laboratory presented accurate test results to the Department;
5. A list of all authorized installers of the ignition interlock device, including the name, location, telephone number, contact person, and hours of operation of each authorized installer;
6. A copy of the complete written instructions the manufacturer will provide to its authorized installers under R17-5-609 for installation and operation of the ignition interlock device for which the manufacturer seeks certification. The written instructions shall include a requirement for the installer to affix, to each certified ignition interlock device installed, a warning label that conforms to the criteria prescribed under R17-5-609, as illustrated on the application form provided by the Department;
7. A copy of the complete written instructions the manufacturer shall provide to its authorized installers under R17-5-609 for distribution under R17-5-704 to participants and other operators of a vehicle equipped with the ignition interlock device for which the manufacturer seeks certification; and
8. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
- A product liability policy with a current effective date;
 - The name and model number of the ignition interlock device model covered by the policy;
 - Policy coverage of at least \$1,000,000;
 - The manufacturer as the insured and the state of Arizona as an additional insured;
 - Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
 - The insurance company shall notify the Department at least 30 days before canceling the product liability policy.
- D.** On or before April 1, 2015, a manufacturer shall submit a new application form and all the information required in this Section to the Department to certify any new ignition interlock device, or recertify an existing ignition interlock device, to the NHTSA specifications in subsection (E). For each ignition interlock device, a manufacturer shall submit a new laboratory report from an independent laboratory to the Department that presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the NHTSA specifications.
- E.** Beginning on April 1, 2015, for any new installation of an ignition interlock device or replacement of a device on a participant's vehicle, a manufacturer or its authorized installer shall install only a certified ignition interlock device that meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A - Quality Assurance Plan Template, and Appendix B - Sample Format For Downloaded Data from the Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26868, May 8, 2013.

Historical Note

New Section recodified from R17-4-709.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-604 renumbered to R17-5-607; new R17-5-604 renumbered from R17-5-602 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-605. Application Processing; Time-frames; Exception

- A.** The Department shall process an application for certification under this Article or Article 7, or an application for recertification under R17-5-702, only if an applicant meets all applicable application requirements.
- B.** The Department shall, within 10 days of receiving an application for certification or recertification provide notice to the applicant that the application is either complete or incomplete.
- The date of receipt is the date the Department stamps on the application when received.
 - If an application is incomplete, the notice shall specifically identify what required information is missing.
- C.** An applicant with an incomplete application shall provide all missing information to the Department within 15 days of the date indicated on the notice provided by the Department under subsection (B).
- After receiving all of the required information, the Department shall notify the applicant that the application is complete.
 - The Department may deny certification or recertification if the applicant fails to provide the required information within 15 days of the date indicated on the notice provided by the Department under subsection (B).
- D.** Except as provided under subsection (F), the Department shall render a decision on an application for certification or recertification under this Article or Article 7, within 30 days of the date indicated on the notice acknowledging receipt of a complete application under subsection (B) or provided to the applicant under subsection (C).
- E.** For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames for processing an application for certification or recertification under this Article or Article 7:
- Administrative completeness review time-frame: 10 days.
 - Substantive review time-frame: 30 days.
 - Overall time-frame: 40 days.
- F.** Established time-frames may be suspended by the Department under A.R.S. § 41-1074 until all external agency approvals required for certifying a new ignition interlock device model are submitted by a manufacturer under R17-5-604.

Historical Note

New Section recodified from R17-4-709.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-605 renumbered to R17-5-608; new R17-5-605 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

- A.** An application for certification of an ignition interlock device model is complete when the Department receives:
- From the manufacturer, a properly prepared application form;

2. From the manufacturer, all additional items required under R17-5-604(C); and
 3. From the Arizona Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets the NHTSA specifications in R17-5-604(C).
- B.** The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:
1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
 2. The manufacturer's liability insurance coverage is terminated or canceled;
 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
 4. The manufacturer or independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C); or
 6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.
- C.** The Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D.** If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

Historical Note

New Section recodified from R17-4-709.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-606 renumbered to R17-5-609; new R17-5-606 renumbered from R17-5-603 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-607. Cancellation of Certification; Hearing

- A.** The Director shall cancel an ignition interlock device model certification and remove the device from its list of certified ignition interlock devices on finding any of the following:
1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
 2. The manufacturer's liability insurance coverage is terminated or canceled;
 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
 4. The manufacturer or independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C);
- 6.** The manufacturer instructs the Department to cancel its certification of the ignition interlock device model; or
- 7.** The manufacturer, its authorized installer, or the device does not comply with this Article or any other applicable rule or statute.
- B.** The Department, on finding any of the conditions described under subsection (A), or on finding that the reporting manufacturer failed to timely remedy the issues identified in the notice provided under R17-5-602(E), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
1. Specify the basis for the action;
 2. Specify the date when the one-year decertification begins and ends; and
 3. State that the manufacturer may, within 15 days after receipt of a notice and order of manufacturer device model cancellation, file a written request for a hearing with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5, to show cause as to why the ignition interlock device certification should not be cancelled.
- C.** If a hearing to show cause is timely requested, the Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of manufacturer device model certification.
- D.** Within 10 days after a hearing, the hearing officer shall issue to the manufacturer a written decision, which shall:
1. Provide findings of fact and conclusions of law; and
 2. Grant or cancel the certification.
- E.** If the hearing officer affirms the manufacturer device model cancellation, the manufacturer may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 35 days of the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay while the appeal is pending.
- F.** Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all ignition interlock devices that are not certified and facilitate the replacement of each device with a certified ignition interlock device.
- G.** The manufacturer of a previously decertified ignition interlock device model may reapply to the Department for certification of the ignition interlock device model under R17-5-604 after the one-year device decertification period ends.
- H.** During the period of cancellation, the Department shall notify each authorized installer of the manufacturer and each service representative that each of them is prohibited from installing the ignition interlock device for which the device certification was cancelled.
- I.** Cancellation of a manufacturer's device model certification prohibits the manufacturer from performing its duties with respect to the device model that has been cancelled and making the device model available for installation in the state for a period of one year from the latest of the following dates when:
1. The Department cancels a manufacturer's device model certification, or
 2. The Department's Executive Hearing Office cancels the manufacturer's device model certification.

Historical Note

New Section recodified from R17-4-709.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-607 renumbered to R17-5-610; new R17-5-607 renum-

bered from R17-5-604 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

Appendix A. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix A renumbered to R17-5-610, Appendix A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix B renumbered to R17-5-610, Appendix B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix C renumbered to R17-5-610, Appendix C, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-608. Modification of a Certified Ignition Interlock Device Model

- A. A manufacturer shall notify the Department in writing at least 10 days before a material modification is made to a certified ignition interlock device model.
- B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Department, a manufacturer shall:
 1. Submit to the Department a completed application form and all additional items required under R17-5-604(C), and
 2. Obtain certification of the materially modified ignition interlock device from the Department.
- C. The Department's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

Historical Note

New Section recodified from R17-4-709.07 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-608 renumbered to R17-5-611; new R17-5-608 renumbered from R17-5-605 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-609. Manufacturer Referral to Authorized Installers; Manufacturer Oversight of its Authorized Installers

- A. A manufacturer shall perform a background records check on a manufacturer's authorized installer to determine:
 1. Each authorized installer's past employment history,
 2. That each authorized installer provides good customer service and adequately serves the public interest,
 3. That each authorized installer has certified that the authorized installer has not had a felony conviction in the five years preceding the individual's request for certification, and

4. The authorized installer's motor vehicle record, driver license status, and the existence of any driving under the influence convictions.
- B. In this Section, conviction means that a court of competent jurisdiction, after adjudication, found the individual guilty.
- C. A manufacturer shall refer a participant only to an authorized installer.
- D. A manufacturer shall provide the Department with a toll-free telephone number for a participant to call to obtain names, locations, telephone numbers, contact persons, and hours of operation for its authorized installers.
- E. A manufacturer shall notify the Department within 10 days of a change of address of its principal or established place of business in this state.
- F. A manufacturer shall ensure that its authorized installer follows the installation and operation procedures established by the manufacturer.
- G. A manufacturer shall ensure that its authorized installer receives and maintains all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the certified ignition interlock device.
- H. A manufacturer shall ensure that its authorized installer:
 1. Complies with the manufacturer's procedures for removing a certified ignition interlock device from a vehicle, and
 2. Electronically notifies the Department within 24 hours after removing a certified ignition interlock device.
- I. A manufacturer shall ensure that its authorized installer distributes and makes available for every participant operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's written instructions for the following:
 1. Operating a motor vehicle equipped with the certified ignition interlock device,
 2. Cleaning and caring for the certified ignition interlock device, and
 3. Identifying and addressing any vehicle malfunctions or repairs that may affect the certified ignition interlock device.
- J. A manufacturer shall ensure that its authorized installer provides to every participant, and makes available for any participant operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's specified training on how to operate a motor vehicle equipped with the device.
- K. A manufacturer or installer shall provide a warning label, for each certified ignition interlock device installed, which shall:
 1. Be of a size appropriate to each device model;
 2. Have an orange background; and
 3. Contain the following language in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- L. A manufacturer shall ensure that its authorized installer affixes conspicuously to each installed certified ignition interlock device the warning label described under subsection (K).

Historical Note

New Section recodified from R17-4-709.08 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-609 renumbered to R17-5-612; new R17-5-609 renumbered from R17-5-606 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-610. Installation Verification; Accuracy Check; Non-compliance and Removal Reporting; Report Review

- A.** A participant shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B.** A manufacturer shall comply, and ensure that its authorized installer complies, with its written procedures for the installation of a certified ignition interlock device.
- C.** Certified ignition interlock device installation verification.
1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of installing a certified ignition interlock device.
 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
 - a. Installer ID;
 - b. Participant's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Removal date; and
 - h. Report type.
- D.** Certified ignition interlock device accuracy and compliance check.
1. A manufacturer shall ensure that its authorized installer schedules a participant for accuracy and compliance checks as follows:
 - a. 30 days, 60 days, and 90 days after installation of a certified ignition interlock device; and
 - b. At least once every 90 days after the first 90-day accuracy and compliance check until the participant is eligible for device removal.
 2. A manufacturer shall electronically transmit, or ensure that the manufacturer's authorized reporting installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing an accuracy and compliance check on an installed certified ignition interlock device.
 3. A manufacturer or the manufacturer's authorized reporting installer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means or by regular mail, which shall include:
 - a. A report summarizing why the data logger or any other evidence confirms the occurrence of a violation; and
 - b. A data logger that shows at least 12 hours of data before and after the violation.
 4. A manufacturer or the manufacturer's authorized reporting installer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means or by regular mail, which may include:
 - a. Photographs;
 - b. Video recordings;
 - c. Written statements; and
 - d. Any other evidence relevant to a violation.
- E.** Certified ignition interlock device removal report.
1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours if a certified ignition interlock device is removed before the end of a participant's certified ignition interlock device period.
 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
 - a. Installer ID;
 - b. Participant's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Removal date;
 - h. Report type; and
 - i. Noncompliance code.
- F.** Reportable activity for a participant's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a participant of any of the following:
1. Tampering with a certified ignition interlock device as defined in A.R.S. § 28-1301;
 2. A missed rolling retest as defined in R17-5-601;
 3. Failing to provide proof of compliance or inspection of the certified ignition interlock device as required under A.R.S. § 28-1461(E)(4);
 4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1381(A) if the participant is at least 21 years of age;
 5. Attempting to operate the vehicle with an alcohol concentration in excess of the startup set point if the participant is under 21 years of age; or
 6. Disconnecting or removing a certified ignition interlock device, except:
 - a. On receipt of Department authorization to remove the device;
 - b. On repair of the vehicle, if the participant provided to the manufacturer, installer, or service center advance notice of the repair and the anticipated completion date; or
- 5.** The electronic Certified Ignition Interlock Device Summarized Reporting Record for the accuracy and compliance check shall contain all of the following information:
- a. Installer ID;
 - b. Participant's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Removal date;
 - h. Report type;
 - i. Missed rolling retest count and dates;
 - j. Noncompliance code;
 - k. Alcohol concentration violation count and dates;
 - l. Tampering violation date;
 - m. Device download date; and
 - n. Device download time.

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- c. On replacement of one vehicle with another vehicle if replacement of the device is accomplished within 72 hours of device removal.
- G.** A participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition. A missed rolling retest is reportable activity for a participant's noncompliance under subsection (F).
- H.** The Department shall count one missed rolling retest for a participant who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the participant providing a valid and substantiated breath sample within six minutes.
- I.** Beginning on April 1, 2015, the Department shall extend the ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of four missed rolling retests that occur during the participant's ignition interlock period.
- J.** A manufacturer or its authorized reporting installer shall screen a participant's data loggers to ensure that there is no improper reporting. A manufacturer or its authorized reporting installer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during a participant's ignition interlock period.
- K.** A manufacturer shall provide written notice, as requested, to the Department of each authorized reporting installer who is authorized to send data loggers, reports, and other participant records to the Department.
- L.** A manufacturer or its authorized installer shall ensure that a certified ignition interlock device has the necessary programming to identify each participant's ignition interlock period and to report and send data and violations to the Department as required by these rules.
- M.** A manufacturer or its authorized reporting installer shall review within 10 days all reports generated by the Department and returned to the manufacturer or installer for verification of accurate reporting. If a manufacturer or its authorized installer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer or its authorized installer shall immediately contact the Department to correct the participant's record before corrective action is initiated against a participant as a result of misreported ignition interlock data.
- N.** A manufacturer or its authorized reporting installer shall immediately contact the Department if the manufacturer or its authorized reporting installer finds that the reported information indicates:
1. An obvious mechanical failure of a certified ignition interlock device;
 2. Obvious errors in the recorded, certified ignition interlock device data that cannot be attributed to a participant's actions; or
 3. Obvious errors in the transmission of certified ignition interlock device data to the Department, including misreported instances of tampering.

Historical Note

New Section recodified from R17-4-709.09 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-610 renumbered to R17-5-703; new R17-5-610 renumbered from R17-5-607 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

Exhibit A. Renumbered**Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A renumbered to R17-5-703, Exhibit A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Renumbered**Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit B renumbered to R17-5-703, Exhibit B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix A. Repealed**Historical Note**

Appendix A renumbered from R17-5-607, Appendix A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Repealed**Historical Note**

Appendix B renumbered from R17-5-607, Appendix B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Repealed**Historical Note**

Appendix C renumbered from R17-5-607, Appendix C, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Serviceto Participants

- A.** A manufacturer shall ensure that its authorized installer provides to each participant a 24-hour emergency phone number for assistance in the event a certified ignition interlock device fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a certified ignition interlock device.
1. Within two hours after receiving a participant's call for emergency assistance, if the authorized installer determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a certified ignition interlock device, the authorized installer shall either:
 - a. Provide telephonically, the technical information required for the participant to resolve the issue; or
 - b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
 2. Within 48 hours after receiving a participant's call for emergency assistance, the authorized installer shall either:
 - a. Make the certified ignition interlock device functional, or
 - b. Replace the certified ignition interlock device.
- B.** A manufacturer shall ensure uninterrupted service to a participant for the duration of the participant's certified ignition interlock period, which shall include facilitating the immediate replacement of an authorized installer if the installer goes out of business, its recertification is denied, or its certification is cancelled by the Department under R17-5-708.
1. If a manufacturer terminates its authorized installer's appointment, or the Department cancels the installer's certification or denies recertification under R17-5-708, the manufacturer shall:
 - a. Obtain participant records from its formerly authorized installer; and

- b. Provide the participant records to a new authorized installer for retention according to R17-5-612; or
 - c. Retain the participant records according to R17-5-612, if a new authorized installer is not appointed.
2. If a manufacturer appoints a new authorized installer, the manufacturer shall:
 - a. Ensure that the new authorized installer operates either:
 - i. A mobile service center that is located within 75 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; or
 - ii. A service center that is a permanent facility located within 125 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; and
 - b. Notify each participant affected by the appointment of the new authorized installer at least 30 days before the appointment becomes effective.
 3. If a manufacturer does not appoint a new authorized installer, or its new authorized installer cannot provide service as prescribed under subsection (B)(2), the manufacturer, at no cost to the participant, shall:
 - a. Provide written notification to all participants affected by the change of authorized installers at least 30 days before the authorized installer is to discontinue service. The written notification shall inform the participant of the manufacturer's responsibility to facilitate removal and replacement of the certified ignition interlock device and shall provide all of the instructions necessary for the participant to successfully exchange the device;
 - b. Remove the device from the vehicle of each affected participant; and
 - c. Facilitate the replacement of each device through a manufacturer with an authorized installer that can provide service as prescribed under subsection (B)(2).
 4. A manufacturer shall notify the Department within 72 hours of replacing its authorized installer.
 5. A manufacturer shall submit to the Department an updated list of its authorized installers within 10 days after making a change to the list provided to the Department under R17-5-604.
- C.** Except in an emergency situation, a manufacturer or its authorized installer shall not remove another manufacturer's certified ignition interlock device without the express permission of that manufacturer.
1. If in an emergency situation a manufacturer or its authorized installer removes another manufacturer's certified ignition interlock device, that manufacturer or authorized installer shall return the device to the original installer within 72 hours of the emergency removal; and
 2. The original installer, on receipt of the device, shall provide to the Department an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.
- D.** A manufacturer shall facilitate the immediate replacement of its authorized installer's service center if the service center goes out of business or the installer's certification is cancelled or recertification is denied under R17-5-708. The manufacturer shall notify the Department within 72 hours of replacing a service center.
1. If an out-of-business or cancelled service center is replaced, the manufacturer shall make all reasonable efforts to obtain, from the service center being replaced, all participant records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by the new service center.
 2. If an out-of-business or cancelled service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612. The Department shall be notified of this event within 72 hours.
 - a. The manufacturer shall facilitate removal of all installed certified ignition interlock devices no longer serviced by the out-of-business or cancelled service center, and shall bear the cost of replacing each device with a serviceable certified ignition interlock device, even if the replacement device must be provided through an alternate manufacturer.
 - b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
 3. If the manufacturer cannot comply with subsection (D)(1) or subsection (D)(2) within 60 days, the manufacturer shall:
 - a. Notify its customers and the Department that service will be terminated; and
 - b. Remove each device at no cost to the customer.

Historical Note

Section R17-5-611 renumbered from R17-5-608 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-612. Records Retention; Submission of Copies and Quarterly Reports

- A.** Records retention. A manufacturer shall retain, or ensure that its authorized installer retains, a participant's records in an electronic or a paper format for three years after the removal of a certified ignition interlock device. The retained records shall consist of every document relating to installation and operation of the certified ignition interlock device. The installer and the service center shall maintain all daily participant driving activity records in the device's data storage system, and shall make participant records available to the Department on request at the principal place of business.
- B.** Copies of records and quarterly reports.
1. A manufacturer shall ensure that its authorized reporting installer or the manufacturer provides copies of participants' records to the Department within 10 days after Department personnel make a request for copies of records, including records relating to installation and operation of the certified ignition interlock device.
 2. A manufacturer shall ensure that its authorized installer mails or e-mails to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
 - a. The number of certified ignition interlock devices the authorized installer currently has in service;
 - b. The number of certified ignition interlock devices installed since the previous quarterly report; and
 - c. The number of certified ignition interlock devices removed by the authorized installer since the previous quarterly report.

Historical Note

Section R17-5-612 renumbered from R17-5-609 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-613. Inspections

- A.** The Department shall investigate any complaint or report of misconduct brought against a certified ignition interlock device manufacturer, installer, or installer-certified service representative, or against a service center for noncompliance with a provision of Articles 6 or 7 of this Chapter or A.R.S. Title 28, Chapter 4, Article 5.
- B.** To comply with certification and the enforcement provisions of A.R.S. § 28-1465, the Department may request the consent of a manufacturer or a manufacturer's authorized installer for periodic onsite inspections at the established place of business of a manufacturer, a manufacturer's authorized installer, or a service center to determine whether a manufacturer or a manufacturer's authorized installer is in compliance with the Department's ignition interlock program requirements established under Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.
- C.** The Department shall conduct an inspection of a manufacturer, an installer, or a service center under the provisions of A.R.S. § 41-1009. The inspection shall include an examination of participant records and verification of an adequate supply of the warning labels that meet the requirements of A.R.S. § 28-1462, R17-5-609, and R17-5-704.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS**R17-5-701. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-1301, the definitions provided under R17-5-601 apply to this Article unless the context otherwise requires.

Historical Note

New Section recodified from R17-4-801 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements; Recertification

- A.** A manufacturer's authorized installer shall be certified by the Department before installing a certified ignition interlock device, and shall be recertified annually by the Department to continue to install a certified ignition interlock device under Arizona law.
- B.** The Department may establish a system of staggered recertification for authorized installers throughout the twelve months of the year. If the Department approves an installer's certification or recertification, the certification or recertification shall extend for one year from the date of Department approval. A manufacturer's authorized installer shall submit to the Department the information required in subsection (D) on an annual basis for recertification. The Department may accept docu-

ments submitted with the initial application for certification, subject to Department approval.

- C.** A manufacturer's authorized installer shall obtain from the manufacturer, as provided under R17-5-609, all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the manufacturer's certified ignition interlock device.
- D.** A manufacturer's authorized installer shall submit to the Department a properly completed application for installer certification or recertification. The application for installer certification or recertification shall provide:
1. The authorized installer's name;
 2. The authorized installer's business address and telephone number;
 3. The authorized installer's status as a sole proprietorship, partnership, limited liability company, or corporation;
 4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 5. The name and model number of each certified ignition interlock device the authorized installer intends to install; and
 6. The following statements, signed by the authorized installer and acknowledged by a notary public or Department agent:
 - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
 - b. A statement that the authorized installer agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
 - c. A statement that the authorized installer agrees to comply with all requirements under this Article; and
 - d. A statement that the authorized installer agrees to immediately notify the Department of any change to the information provided on the application form.
- E.** The Department shall process an application for installer certification or recertification as provided under R17-5-605.
- F.** Department certification issued to an authorized installer under this Article shall not expire as long as the installer remains authorized by a manufacturer to install its certified ignition interlock device model under Arizona law and the installer completes all requirements for annual recertification in the time period prescribed in this Section.
1. If a Department-certified installer is no longer authorized by a manufacturer to install its certified ignition interlock device, the manufacturer shall notify the Department within 24 hours that an installer is no longer authorized by the manufacturer.
 2. If the installer again becomes authorized by a manufacturer to install its certified ignition interlock device, the installer may reapply to the Department for certification under this Article by submitting a new application.
- G.** A Department-certified ignition interlock device installer shall notify the Department within 24 hours of making a decision to relocate a fixed-site service center.
- H.** A Department-certified installer shall train and certify each of its service representatives on the proper installation of a certified ignition interlock device before allowing the service representative to install the certified ignition interlock device.
- I.** A Department-certified ignition interlock device installer shall provide to the Department a current list of the names of each of its certified service representatives on a quarterly basis. The

installer shall electronically notify the Department within 24 hours after making a change to its list.

Historical Note

New Section recodified from R17-4-805 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-703. Ignition Interlock Device Installer Bond Requirements; Recertification

- A.** Before installing, servicing, or removing a certified ignition interlock device, an installer shall:
1. Be appointed by a manufacturer as an authorized installer of its certified ignition interlock device;
 2. Obtain an ignition interlock installer bond from a surety company authorized by the Arizona Department of Insurance to conduct general surety business in Arizona. The ignition interlock installer bond shall be:
 - a. In the amount of \$25,000;
 - b. On the approved form provided by the Department; and
 - c. Maintained for as long as the installer intends to install, service, or remove Department-certified ignition interlock devices under Arizona law;
 3. Submit the original completed ignition interlock installer bond to the Arizona Department of Transportation, Motor Vehicle Division, Ignition Interlock Program, 1801 W. Jefferson St. MD530M, Phoenix, AZ 85007; and
 4. Receive Department certification or recertification under R17-5-702.
- B.** An installer authorized by a manufacturer and certified or recertified by the Department to install, service, or remove more than one certified ignition interlock device model needs only one bond, which shall extend as long as the installer is certified or recertified.

Historical Note

New Section recodified from R17-4-806 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). Section R17-5-703 renumbered from R17-5-610 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

Exhibit A. Repealed

Historical Note

Exhibit A renumbered from R17-5-610, Exhibit A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Repealed

Historical Note

Exhibit B renumbered from R17-5-610, Exhibit B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-704. Authorized Installer Responsibilities

- A.** An authorized installer certified by the Department to install a certified ignition interlock device shall:
1. Follow the installation and operating procedures established and provided by the manufacturer;
 2. Acquire and maintain all necessary training and skills specified by the manufacturer for installing, troubleshooting, examining, and verifying the proper operation of its certified ignition interlock device;
 3. Comply with all of the manufacturer's procedures for removing the certified ignition interlock device from a vehicle;
 4. Electronically notify the Department within 24 hours after removing a certified ignition interlock device under R17-5-610;
 5. Provide to the manufacturer, or to the Department if delegated by the manufacturer, an accurate electronic reporting of all applicable information required of the manufacturer under R17-5-610 and R17-5-612;
 6. Provide to every participant, and make available for every person operating a motor vehicle equipped with the certified ignition interlock device, a copy of the manufacturer's written instructions for the following:
 - a. Operating a motor vehicle equipped with the certified ignition interlock device;
 - b. Cleaning and caring for the certified ignition interlock device; and
 - c. Identifying and addressing vehicle malfunctions or repairs that may affect the certified ignition interlock device;
 7. Ensure that each participant receives an operator's manual and is further instructed regarding all of the following:
 - a. How to use the system;
 - b. How to obtain service for the system;
 - c. How to find answers to any additional questions;
 - d. How the alcohol retest feature works;
 - e. How drinking alcohol before a test may result in a reading of sensitive or fail;
 - f. How the device shall not be removed, except by an installer-certified service representative;
 - g. How missing an appointment for a regularly scheduled accuracy check will cause the certified ignition interlock device to enter into a lock-out condition that will emit a unique cue, either auditory, visual, or both, to warn the driver that after 72 hours the vehicle will not start. It shall be the responsibility of each participant to have the car towed to the service center if a lock-out condition occurs;
 - h. How noncompliance with a regularly scheduled accuracy check shall result in suspension under A.R.S. § 28-1463 of the participant's driver license until proof of compliance is submitted to the Department under A.R.S. § 28-1461; and the duration of the participant's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
 - i. What the penalties are for tampering with or misusing the system;
 - j. What will happen after failing a start-up breath alcohol test;
 - k. What will happen after a participant has a set of four valid and substantiated missed rolling retests during the participant's ignition interlock period; and that a participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; and
 8. Ensure that each participant demonstrates:
 - a. A properly delivered alveolar breath sample; and

- b. An understanding of how the abort test feature works.
 - 9. Affix conspicuously, the warning label provided by the manufacturer under R17-5-609.
 - 10. Check each device for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each participant's regularly scheduled accuracy and compliance check required under R17-5-610.
 - 11. Notify the Department electronically under R17-5-610 if any evidence of tampering is discovered and submit valid and substantiated proof or evidence of a reportable activity.
- B.** An installer shall not permit a service representative whose driving privilege is limited pursuant to A.R.S. §§ 28-1381, 28-1382, 28-1383, or 28-3319, or restricted under A.R.S. § 28-1402 to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a certified ignition interlock device until the restrictive period of the service representative's driving privilege ends. An installer whose driving privilege is limited pursuant to A.R.S. §§ 28-1381, 28-1382, 28-1383, or 28-3319, or restricted under A.R.S. § 28-1402 shall not install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a certified ignition interlock device until the restrictive period of the installer's driving privilege ends.

Historical Note

New Section recodified from R17-4-807 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-705. Installer-certified Service Representatives

- A.** Certification requirements.
1. To achieve certification as a service representative, an individual shall obtain written documentation from a Department-certified ignition interlock device installer documenting that the individual is currently trained in each aspect involved with the specific certified ignition interlock device for which the individual seeks certification to install or service.
 2. An installer shall not certify as a service representative, any individual with a felony conviction in the five years preceding the individual's request for certification. In this Section, conviction means that a court of competent jurisdiction adjudicated the individual guilty.
- B.** Proficiency requirements.
1. It is the responsibility of the installer to ensure that its certified service representatives maintain proficiency in each aspect involved with each specific certified ignition interlock device model the individual is certified to install or service.
 2. The Department may at any time require an installer-certified service representative to demonstrate competency in the installation, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing or removal of a specific certified ignition interlock device. Failure of the installer-certified service representative to demonstrate proficiency to the Department may result in corrective action against the installer as provided under R17-5-601.

Historical Note

New Section recodified from R17-4-808 at 7 A.A.R.

3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-706. Accuracy and Compliance Check; Requirements

- A.** An installer-certified service representative shall inspect, maintain, and check each certified ignition interlock device for calibration accuracy and operational performance before the device is placed into, or returned to service.
- B.** The installer-certified service representative shall perform each accuracy and compliance check in accordance with NHTSA specifications as referenced in R17-5-604(C) at a service center authorized by an installer certified by the Department under R17-5-702.
- C.** The accuracy and compliance check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
1. Accuracy standards as prescribed under R17-5-603;
 - a. The device shall be calibrated before placed into, or returned to service.
 - b. The calibration test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The installer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The calibration test result shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
 2. Anticircumvention standards and operational features as prescribed under R17-5-603.
- D.** The calibration test referenced under subsection (C) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device shall be examined for evidence of tampering while it is still attached to the vehicle.
- E.** If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.
- F.** At least once every 90 days, an installer-certified service representative shall perform a physical inspection of the ignition interlock device while it is still attached to the vehicle.
- G.** An installer-certified service representative shall perform a physical inspection of the ignition interlock device at other times when the data logger indicates that tampering has occurred and shall maintain a log showing the findings.
- H.** If at any time an individual device fails to meet the provisions of this Section, the manufacturer, installer, service center, or installer-certified service representative shall either:
1. Repair, recalibrate, and retest the device to ensure that it does meet all applicable standards; or
 2. Remove the device from service.

Historical Note

New Section recodified from R17-4-501 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20

A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-707. Inspection of Service Centers; Application

- A.** A service center, whether located on a fixed site or mobile, shall meet the requirements necessary to maintain installer certification under this Article before it is used by an installer to conduct certified ignition interlock device related business in this state.
- B.** An installer shall submit to the Department a separate application for each individual service center the installer intends to use for conducting certified ignition interlock device related business in this state.
- C.** On an application for a service center, available from the Department, an installer shall identify:
1. The physical location of the service center;
 2. The certified ignition interlock device, or devices, to be merchandised and serviced at the location; and
 3. The reference sample device, or devices, that will be used at the location.
- D.** An installer shall attach to the application submitted to the Department under subsection (B), a statement from the manufacturer acknowledging that the installer is authorized to install the certified ignition interlock device, or devices, described on the application.
- E.** The Department may request an installer applying to meet the requirements for a service center to consent to allow the Department access to the service center for inspection under subsection (H).
- F.** An installer applying for a service center shall agree to comply with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5.
- G.** To operate a service center, the installer's ignition interlock device testing facilities, equipment, and the procedures used in the service center shall meet the following conditions:
1. A fixed-site service center shall be located in a facility that accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and removing a specific ignition interlock device consistent with the requirements of this Article. The installer shall:
 - a. Provide a designated waiting area for the participant that is separate from the installation area; and
 - b. Ensure that no participant witnesses installation of the certified ignition interlock device.
 2. A mobile service center shall be equipped with the same materials and capacities prescribed under subsection (G)(1). An installer or service representative operating a mobile service center shall:
 - a. Provide a designated waiting area for the participant that is separate from the area used for the installation area; and
 - b. Ensure that no participant witnesses installation of the certified ignition interlock device.
 3. The installer, whether operating a fixed-site service center, or mobile, shall ensure that its certified service representatives utilize all of the following:
 - a. The analysis of a reference sample such as head-space gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the Department. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the Department on request.
 - b. The startup set point value established under R17-5-603(A). All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
 - c. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.
4. Only a properly trained installer-certified service representative shall perform certified ignition interlock device related services rendered through a service center.
- a. The installer shall maintain sufficient staff at each service center to ensure an acceptable level of service. The service center shall always be staffed with at least one installer-certified service representative.
 - b. The installer shall schedule accuracy and compliance checks at each service center in a manner that will not deprive a participant of an acceptable level of service.
 - c. The installer's software shall document the certified service representative performing each accuracy and compliance check and shall record the date each service is performed.
 - d. Department-certified installers may train potential certified service representatives in the service center only under the direct supervision of a currently certified service representative.
5. The installer shall agree to:
- a. Submit a violation as defined in R17-5-601 regarding a participant's noncompliance to the Department by providing valid and substantiated proof or evidence of a reportable activity as required in R17-5-610(D) no later than 24 hours after the installer discovers the violation;
 - b. Maintain complete records in an electronic or paper format of each device installation for three years from the date of its removal;
 - c. Require each applicant seeking installer certification as a service representative to certify that the applicant has not been convicted of a felony within the five years preceding the date of application;
 - d. Retain the five-year felony certification required of each installer-certified service representative under subsection (G)(5)(c) for five years after the date of the employee's separation from employment; and
 - e. Make available to the Department on request, either by inspection or in hard copy form, all records relating to the installer's ignition interlock device operations.
6. The installer shall ensure that all anticircumvention features are activated on each installed certified ignition interlock device.
7. The installer shall install and inspect each certified ignition interlock device as provided under this Article.
- a. Each time an installer uploads the information from a participant's certified ignition interlock device, the installer-certified service representative shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure that no tampering has occurred during the monitoring period.
 - b. The calibration test referenced under R17-5-706 shall be performed if the downloaded device information indicates that the device has experienced an interruption in service or was completely disconnected.
8. The installer shall agree to abide by conditions for the removal of a certified ignition interlock device, including but not limited to the following:
- a. Provide electronic notification to the Department of device removal under R17-5-610(E) within 24 hours

and electronically submit the required reporting record.

- b. A service representative or service center shall not remove the certified ignition interlock device of another manufacturer, except in an emergency, or other special circumstance authorized by the Department. All removals shall be documented and reported to the Department. All device removal records shall be retained as prescribed under R17-5-612.
 - c. When a participant makes a request to exchange one manufacturer's device for the device of another manufacturer, the installer of the original device shall notify the Department of the device removal under R17-5-610(E).
- H.** The Department may cancel the certification of an installer, prohibiting operation of its service center if the installer or service center is not complying with any provision under this Article, engaging in improper reporting as defined in R17-5-601, not complying with reporting provisions in R17-5-610, or not complying with A.R.S. Title 28, Chapter 4, Article 5. To ensure continuous compliance with the Department's certified ignition interlock program requirements, the Department may inspect an installer's service center and take corrective action against the installer as provided under R17-5-601 if a deficiency is identified during an inspection conducted under R17-5-613.
- I.** An installer shall designate a custodian of records who shall, if required in an administrative hearing or court proceeding, provide testimony concerning the interpretation of data storage system records and answer questions concerning the installer's certification and compliance with the Department's ignition interlock program requirements.
- J.** Before issuing certification, the Department may perform an onsite inspection of a service center to verify compliance with this Article.
- K.** After verifying compliance with subsections (A) through (G), the Department shall provide evidence of approval to the installer that shall remain valid until cancelled by the Department or terminated by the installer or service center. Evidence of approval provided to an installer or service center under this Section demonstrates that the installer's service center has met all of the criteria necessary for approval by the Department.
- L.** Approval of the installer's service center is contingent on the installer's agreement to conform with and abide by all directives, orders, and policies issued by the Department regarding any service center activities regulated by the Department under this Article and A.R.S. Title 28, Chapter 4, Article 5, which may include:
- 1. Program administration,
 - 2. Reports,
 - 3. Records and forms,
 - 4. Inspections,
 - 5. Methods of operations and testing protocol,
 - 6. Personnel training and qualifications,
 - 7. Criminal history considerations for installer-certified service representatives, and
 - 8. Records custodian.
- M.** Certification of an installer issued under this Article may be cancelled by the Department if the installer's service center, or installer-certified service representative is not in compliance with a provision of this Article, provisions regarding reporting in R17-5-610 and R17-5-601, or A.R.S. Title 28, Chapter 4, Article 5, or the certified ignition interlock device equipment it is authorized by the manufacturer to install no longer meets the requirements provided under Article 6 of this Chapter.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).
Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

R17-5-708. Notice; Denial or Cancellation of Certification; Appeal; Hearing

- A.** If the Department determines that an authorized reporting installer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the authorized reporting installer with the following information:
- 1. The name of the participant and the date of the improper reporting; and
 - 2. The authorized reporting installer shall send the required record or report to the Department within ten business days, if applicable.
- B.** If the authorized reporting installer fails to remedy the issues identified in the notice provided under R17-5-708(A) within ten business days, the Department may cancel the authorized reporting installer's certification.
- C.** If the Department denies a pending application for certification or recertification of an installer, or cancels a certification previously issued to an installer, the installer may appeal the action as follows:
- 1. Within 15 days after receipt of a notice of denial of application or a notice of cancellation of certification or a notice of denial of recertification of an installer, the installer may file a written request for a hearing on the issue of the denial or cancellation with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
 - 2. If a hearing on the issue of the denial or cancellation is timely requested, the Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of an installer's certified activities.
 - 3. Within 10 days after a hearing, the hearing officer shall issue to the installer a written decision, which shall:
 - a. Provide findings of fact and conclusions of law; and
 - b. Grant the application, deny the application, deny recertification, or cancel the certification.
 - 4. If the hearing officer affirms the denial of application or recertification or cancellation of certification, the installer may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 35 days of the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay pending the outcome of judicial review.
- D.** If an installer's certification is cancelled or denied, or recertification is denied, the installer is prohibited from performing its duties and operating under these rules for a period of one year from the latest of the following dates when:
- 1. The Department denies an application or recertification, or cancels a certification of an installer, or
 - 2. The Department's Executive Hearing Office denies the application or recertification, or cancels a certification of an installer.
- E.** After the one-year decertification period ends, an installer may reapply to the Department for certification by completing a new application and meeting all certification requirements under this Article.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).
Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4).

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY**R17-5-801. Definitions**

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person’s driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the weekly computer-to-computer transmission of data from a company to the Division.

“Error return” means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

“Service provider” means a person or entity that provides the connection to a private information network for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added Network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

- A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- B. Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Division-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-803. Insurance Company Reportable Activity

- A. A company shall transmit to the Division:
 1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
 2. A statement of inactivity, if no reportable activity occurred by the reporting date.
- B. For the purpose of this Article, reportable activity shall include:
 1. A policy cancellation;
 2. A policy non-renewal;
 3. A new policy issuance;

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4. A vehicle added to a policy;
 5. A vehicle deleted from a policy;
 6. A policy reinstatement; and
 7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.
- C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The MVD Customer number of the insured:
 - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
 - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
2. The policy number; and
3. The NAIC number of the reporting company.

B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the MVD Customer number.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Division-authorized EDI reporting methods:

1. EDI reporting by information exchange; or
2. EDI reporting by encrypted FTP.

B. A company shall transmit all reportable activity to the Division at least once every seven days.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-807. X12 Data Format for Policy Receipt and Error Return

A. Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona

Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.

B. Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

A. The Division shall:

1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.

B. All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

1. Send to the company, a dated written notice, which:
 - a. Identifies the business week or reporting period in which the company did not submit the required information;
 - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
 - c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
 - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:

1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and

4. Provides a business office contact for the company with a current phone number and mailing information.
- B.** A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:
1. Applicant's name;
 2. Business name, if applicable;
 3. Mailing address, city, state, and ZIP code;
 4. A selection of coverage type:
 - a. Public liability only; or
 - b. Public liability and property damage;
 5. Number of vehicles in the applicant's fleet;
 6. A selection list that describes the nature of the applicant's business;
 7. A description of any hazardous materials transported by type, class, and weight;
 8. A report of all accidents in the prior 39-month period before the application date;
 9. The applicant's signature and official business title to certify that all information is true and correct; and
 10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.
- C.** Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
 2. An annual financial report.
- D.** On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E.** An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division
Financial Responsibility Unit
P.O. Box 2100, Mail Drop 535M
Phoenix, AZ 85001-2100
- F.** A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G.** A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.
- H.** A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.
- I.** In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D), or
 2. A self-insurer no longer owns the covered business or fleet.
- J.** For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858,

effective March 6, 2007 (Supp. 07-1).

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

ARTICLE 9. TRANSPORTATION SERVICE PROVIDERS**R17-5-901. Definitions**

In addition to the definitions provided under A.R.S. § 28-9551, when applicable to a transportation network company, and A.R.S. § 41-2051, when applicable to an owner of a taxi, livery vehicle, or limousine, the following definitions apply to this Article unless otherwise specified:

"Applicant" means a person that meets the statutory requirements of a transportation network company as prescribed under A.R.S. Title 28, Chapter 30, Article 3.

"Designated point of contact" means a person employed by a transportation service provider who has the authority to gather and provide records to the Department on request.

"Transportation network company permit" means a document issued by the Department to an applicant that meets the requirements prescribed under A.R.S. Title 28, Chapter 30, Article 3, as authorization to conduct transportation network services in this state.

"Transportation service provider" means the owner of a taxi, livery vehicle, limousine, or transportation network company.

"Violation" means a failure to maintain or make available to the Department any records the transportation service provider is required to maintain and provide to the Department on request as provided under A.R.S. §§ 28-9554 through 28-9556, when applicable to a transportation network company, and A.R.S. § 41-2097, when applicable to an owner of a taxi, livery vehicle, or limousine.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).

R17-5-902. Transportation Network Company Permit - Initial Application; Issuance; Fee

- A.** An applicant for a transportation network company permit issued by the Department under A.R.S. § 28-9552, shall apply to the Department by:
1. Completing and submitting online the application form provided by the Department at www.azdot.gov;
 2. Providing the full name and contact information of the applicant's agent for service of process in this state;
 3. Certifying that the transportation network company meets the requirements of A.R.S. Title 28, Chapter 30, Article 3;
 4. Filing a legible illustration of the applicant's trade dress; and
 5. Paying a \$1,000 application fee as provided under A.R.S. § 28-9552(A).

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- B. Upon receipt and acceptance of all required documents, fees, and certifications, the Department shall issue to an applicant a transportation network company permit.
- C. The application fee paid to the Department under subsection (A) is refundable in full if the transportation network company permit application is:
 1. Denied by the Department, or
 2. Withdrawn by the applicant before the Department issues a transportation network company permit.
- D. A transportation network company permit issued by the Department under this Section expires three years after issuance and may be renewed as provided under R17-5-903.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).

R17-5-903. Transportation Network Company Permit - Renewal Application; Issuance; Fee

- A. A transportation network company shall apply to the Department for renewal of a transportation network company permit issued by the Department under A.R.S. § 28-9552 and R17-5-902, no earlier than 90 days, and no later than 30 days, before the permit expires by:
 1. Completing and submitting online the renewal application form provided by the Department at www.azdot.gov;
 2. Filing with the Department a legible illustration of the applicant's trade dress if different than the illustration already on file with the Department;
 3. Certifying that the transportation network company meets the requirements of A.R.S. Title 28, Chapter 30, Article 3; and
 4. Paying a \$1,000 renewal application fee as provided under A.R.S. § 28-9552(A).
- B. Upon receipt and acceptance of all required documents, fees, and certifications, the Department shall issue to an applicant a transportation network company permit renewal.
- C. A transportation network company permit renewal issued by the Department under this Section expires three years after the date the existing transportation network company permit expires.
- D. The holder of an expired transportation network company permit may apply to the Department for a new transportation network company permit using the initial application procedure provided under R17-5-902.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).

R17-5-904. Transportation Network Company Permit and Renewal - General Provisions

- A. A transportation network company permit or renewal issued by the Department under this Article shall include an assigned number that remains effective until either withdrawn by the Department or until it expires.

- B. A transportation network company permit or renewal issued by the Department under this Article shall not be transferred or assigned, in whole or in part, to any person other than the person to whom the permit is issued, except upon a merger, change in control, or sale of substantially all of the transportation network company's assets to an entity that assumes the duties and obligations of the permit. The transportation network company shall notify the Department within 30 days of such a transfer or assignment, and the Department shall have 30 days beginning on such notification to nullify the transfer or assignment based on the criteria set forth in this Article. An initial public offering shall not be deemed to trigger a transfer or assignment under this Section.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).

R17-5-905. Transportation Service Provider - Record Review

- A. The Department, after providing reasonable notice to a transportation service provider, may review with or without cause all records a transportation service provider is required to make available to the Department on request as provided under A.R.S. §§ 28-9554 through 28-9556, when applicable to a transportation network company, and A.R.S. § 41-2097, when applicable to an owner of a taxi, livery vehicle, or limousine.
- B. A transportation service provider shall make all records described under subsection (A) available to the Department for review at an Arizona location.
- C. The Department shall conduct a record review during the transportation service provider's normal business hours.
- D. The Department shall provide a copy of its review report to the transportation service provider's designated point of contact. The report shall include the review results and indicate any violations found.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).

R17-5-906. Transportation Service Provider - Designated Point of Contact

- A. A transportation service provider shall provide to the Department the name and contact information of the transportation service provider's designated point of contact in this state.
- B. A transportation service provider shall notify the Department within 10 business days of making a change to the name or contact information of the transportation service provider's designated point of contact in this state.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3).