

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

Editor's Note: The following Notice of Rulemaking Docket Opening was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 1, 2010.

[R11-30]

PREAMBLE

1. Sections Affected

R17-5-201
R17-5-202
R17-5-203
R17-5-204
R17-5-205
R17-5-206
R17-5-208
R17-5-209
R17-5-210
R17-5-211
R17-5-212

Rulemaking Action

Amend
Amend
Amend
Amend
Repeal
Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 28-366, 28-962, and 28-5204

Implementing statutes: A.R.S. §§ 28-3223, 28-3306(A)(5), 28-3315(H), 28-5238

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 534, April 2, 2010

Notice of Rulemaking Docket Opening: 17 A.A.R. 450, April 1, 2011

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John Lindley, Administrative Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007

Telephone: (602) 712-8804

Fax: (602) 712-3373

E-mail: jlindley@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/index.asp.

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5. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Department of Transportation (ADOT), in partnership with the Department of Public Safety (DPS), engages in this rulemaking to incorporate sections of the 2009 edition of the *Code of Federal Regulations*. The United States Department of Transportation requires that states adopt Federal Motor Carrier Safety and Hazardous Materials Regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions especially at Arizona's southern ports of entry.

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

None

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

Not applicable

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

The Arizona Department of Public Safety (DPS) administers and enforces the Federal Motor Carrier Safety Assistance Program throughout the state of Arizona under these rules. The primary cost bearers in relation to these rules are the DPS, counties, and municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

DPS incurs substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$10,000) in possible federal registration fees, inspection fees, insurance, and equipment maintenance to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

The Department of Transportation is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. The Department does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the Federal Motor Carrier Safety and Hazardous Materials Regulations the agency currently has in place.

The Federal Highway Administration (FHWA) extends annually to the Arizona DPS a substantial grant under the Motor Carrier Safety Assistance Program (MCSAP) for state law enforcement of motor carrier safety and hazmat programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to hazmat provision enforcement or incorporate hazmat enforcement together with other duties. Accordingly, local law enforcement electing to engage in hazmat provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate costs. These would be in the form of equipment, maintenance, insurance, and inspection fees. If a motor carrier is found to be non-compliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$5,000 to \$25,000 per citation and the possible loss of a commercial driver license as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John Lindley, Administrative Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007
Telephone: (602) 712-8804
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E-mail: jlindley@azdot.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: May 16, 2011
Time: 2:30 p.m.
Location: 1801 W. Jefferson St., Rm. 403
Phoenix, AZ 85007
Nature: Oral Proceeding/Public Hearing

All comments should be directed to the person listed in item 4. Written comments may be submitted at any time, and oral comments may be made during regular business hours, before the close of public record at 5:00 p.m. on May 16, 2011.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

In R17-5-202: 49 CFR 40, 379, 382, 383, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2009

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2009

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-201. Definitions
- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; ~~Application~~ Applicability
- R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; ~~General Applicability and Definitions; General Requirements and Information~~
- R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
- R17-5-205. ~~Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing~~ Repealed
- R17-5-206. Motor Carrier Safety: ~~Amendment to~~ 49 CFR 392 - Driving of Commercial Motor Vehicles
- R17-5-208. Commercial Driver License ~~Insulin-dependent Diabetic Waiver~~ Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs or Monocular Vision; Federal Diabetes Exemption Program
- R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
- 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
- R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction
- R17-5-212. Motor Carrier Safety: Hearing Procedure

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

~~A~~ 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.

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

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“Director” means the ~~Assistant~~ Director of the Arizona Department of Transportation for the Motor Vehicle Division or the ~~Assistant~~ Director’s designated agent.

“Hearing Office” means the Arizona Department of ~~Transportation, Motor Vehicle Division, 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 physical medicine.

“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.

“Vision examination report” means a form, provided by the Department, to be completed on behalf of a driver, or driver applicant, by a physician or optometrist licensed to practice medicine, osteopathy, optometry, or psychiatry, 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, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

B. Any definition prescribed under A.R.S. § 28-5201 also applies to this Article.

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

- A. The ~~Division~~ Department incorporates by reference 49 CFR 40, 379, 382, ~~383~~, 390, 391, 392, 393, 395, 396, 397, and 399, ~~published revised as of~~ October 1, 2005 ~~2009~~, and no later amendments or editions, as amended under ~~R17-5-202 through R17-5-207~~ this Article. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001, and is on file with the ~~Division~~ Department.
- B. The ~~Sections~~ sections of 49 CFR that are incorporated ~~in~~ under subsection (A) apply as amended under ~~R17-5-203 through R17-5-207~~ this Article to all intrastate and interstate motor carriers operating in Arizona, 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 391.41 through 391.49.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General ~~Applicability~~ and Definitions; General Requirements and Information

- A. 49 CFR 390.3, General applicability, is amended as follows:
 - 1. Paragraph (a) is amended to read:

Regulations incorporated in this ~~Section~~ 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 ~~marked or~~ placarded as prescribed under R17-5-209.
 - 2. Paragraph (b) is amended to read:

A motor carrier driver domiciled in Arizona who operates a commercial motor vehicle as defined under A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rule made under that Chapter.
 - 3. Paragraph (c) is amended to read:

A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirement specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.
 - 4. Paragraph (f)(6) is deleted.
- B. 49 CFR 390.5, Definitions. The definitions listed ~~in~~ under 49 CFR 390.5 are amended as follows:
 - 1. ~~If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.107~~ has the same meaning as prescribed under A.R.S. § 28-5201.
 - 2. ~~If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the licensing requirements prescribed under A.R.S. § 28-3223, the term has the meaning prescribed under A.R.S. § 28-3001.~~
 - 3. ~~If the term “Commercial Motor Vehicle” or “CMV” is not used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382 or the licensing requirement prescribed under A.R.S. § 28-3223, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in furtherance of a commercial enterprise that:~~
 - a. ~~Has a gross vehicle weight rating (GVWR) as a single vehicle or a gross combination weight rating (GCWR) of 18,001 pounds or more for purposes of intrastate commerce;~~

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- b. Transports passengers for hire and has a design capacity of eight or more persons or transports a hazardous material in an amount requiring marking or placarding as prescribed by the federal regulations incorporated in R17-5-209;
- e. Is not an intrastate operating tow truck that has a GVWR of 26,000 pounds or less, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49; or
- d. Operates for purposes of interstate commerce with a GVWR of greater than 10,000 pounds.

- 4. "Exempt intracity zone" is deleted and has no application in R17-5-203 through R17-5-207.
- 5. "For-hire motor carrier," "private motor carrier," "private motor carrier of passengers (business)," and "private motor carrier of passengers (nonbusiness)" are deleted from R17-5-203 through R17-5-207 and the term "motor carrier" is substituted.
- 6. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
- 7. "Special agent" means an officer or agent of the Department, the Department of Public Safety, ~~the Division~~, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
- 8. "State" means a state of the United States or the District of Columbia.
- 9. "Tow truck," as used in the definition of emergency ~~in~~ under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. ~~R13-3-101~~ R13-3-701.

C. 49 CFR 390.15, Assistance in investigations and special studies. Paragraph (a) is amended to read:

A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.

D. 49 CFR 390.19 Motor carrier identification report, Paragraph (a) is amended to read:

(a) Each motor carrier that conducts operations in interstate commerce, intrastate commerce if the carrier requires a Safety Permit as per 49 CFR 385.400 of this Chapter, or intrastate commerce in a CMV defined under A.A.C. R17-5-203(B)(3) shall file a Motor Carrier Identification Report, Form MCS-150, or the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS-150B for permitted carriers, at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT Number ending in:	Must file by last day of:
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	August
9	September
0	October

(3) If the next to last digit of its USDOT number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next to last digit of the USDOT number is even, the motor carrier shall file its update in every even-numbered calendar year.

E. 49 CFR 390.21 Marking of CMVs. Paragraph (a) is amended to read:

(a) General. Every self-propelled CMV listed under A.A.C. R17-5-203(B)(3), subject to subchapter B of this Chapter shall be marked as specified in paragraph (b), (c), and (d) of 49 CFR 390.21.

F.C. 49 CFR 390.23, Relief from regulations.

1. Paragraph (a) is amended to read:

Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:

- a. Is exempt from federal jurisdiction, and
- b. Operates a commercial motor vehicle used or designated to provide relief during an emergency.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists which 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, AZ 85005. The Arizona Department of Public Safety may grant the exemption with any restrictions it considers necessary to provide vital service to the public.

2. Paragraphs (a)(1), including (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.

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3-2. Paragraph (a)(2)(i)(A) is amended to read:

a. An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; or

b. An emergency situation exists under A.R.S. § 28-5234(B) as defined under R17-5-210.

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) as defined under R17-5-210; or

4. Paragraph (a)(2)(i)(B) is amended to read:

The Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau shall determine whether a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.

5. "Interstate commerce" as used in paragraph (b) means engagement in a commercial enterprise.

G.D. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended to read by adding:

A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but may extend a period of relief after considering:

1. Severity of the emergency;

2. Nature of relief services to be provided by the motor carrier, and

3. Other restrictions that may be necessary.

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, AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

H. 49 CFR 390.27, Locations of motor carrier safety service centers, is amended to read:

A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, Commercial Vehicle Enforcement Bureau, Telephone at (602) 223-2212.

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

A. 49 CFR 391.11 Qualifications General qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation ~~and~~; 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 ~~marked~~ or placarded as prescribed under R17-5-209.

B. 49 CFR 391.49 Alternative physical qualification standards for the loss or impairment of limbs.

1. Paragraph (a) is amended by adding:

A person not physically qualified to drive as prescribed under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10) but otherwise qualified to drive a motor vehicle, may drive a motor vehicle in intrastate commerce if the Director grants an intrastate waiver to the person. Application for an intrastate waiver shall be submitted according to subsection (C). If granted, an intrastate waiver shall be for a period not to exceed two years. A person granted an intrastate waiver may transfer the intrastate waiver from an original employer to a new employer upon written notification to the Director stating the new employer's name and the type of equipment to be driven.

2. Paragraph (b) is amended by adding:

To obtain an intrastate waiver, an applicant or an applicant and co-applicant shall submit a letter of application for an intrastate waiver of a physical qualification to the Motor Vehicle Division, Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100. The applicant shall comply with all the requirements of 49 CFR 391.49(e), "Alternative physical qualification standards for the loss or impairment of limbs." The driver applicant shall respond to the requirements of 49 CFR 391.49(e)(2)(i) through (e)(2)(v), if the information is known.

3. Paragraph (e)(1)(iv) is amended to read:

A description of the driver applicant's limb or visual impairment as applicable to the type of waiver being requested.

4. Paragraph (d)(3)(i) is amended to read:

The medical evaluation summary for a driver applicant disqualified under 49 CFR 391.41(b)(1) or (b)(10) shall include:

5. Paragraph (d)(3)(i)(B) is amended to read:

A statement by the examiner 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 when the intrastate waiver is requested due to a loss or impairment of limbs or a statement by the

examiner that an applicant has distant visual acuity at least 20/40 (Snellen), with or without a corrective lens, in one eye, visual field of at least 70° peripheral measurement of the horizontal meridian of the applicant's dominant eye, 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 waiver being requested.

6. Paragraph (j)(1) is amended by adding:

A person with a distant visual acuity of greater than 20/40 (Snellen), with or without a corrective lens, in one eye; a field of vision of less than 70° peripheral measurement of the horizontal meridian of the person's dominant eye; and the inability to distinguish the colors of a traffic signal or device showing standard red, green and amber, shall not:

- a. Transport any amount of hazardous material required to be marked or placarded as prescribed under R17-5-209, or
- b. Operate a vehicle for the purpose of transporting passengers as prescribed under R17-5-202.

C. Waiver procedure for an intrastate driver:

1. A person not physically qualified to drive as prescribed under 49 CFR 391.41(b)(1), (b)(2), or (b)(10) but otherwise qualified to drive a motor vehicle, may drive a motor vehicle intrastate commerce if the Director grants an intrastate waiver to the person.
2. The applicant shall submit an application to the Division as prescribed under 49 CFR 391.49(a), (b), (c), and (d) as amended under this Section.
3. Upon receipt of an application for an intrastate waiver, the Director shall:
 - a. Review the application for waiver to ensure all provisions of 49 CFR 391.49 are met;
 - b. Take necessary testimony and accept documentation and information about the application;
 - c. Ensure that a driver applying for an intrastate waiver of the visual requirements:
 - i. Has driven the type of vehicle to be operated as prescribed in the waiver for at least two of the previous five years; and
 - ii. Will not transport passengers for hire, or
 - iii. Will not transport a reportable quantity of a hazardous substance, hazardous waste that requires a manifest, or hazardous material that requires marking or placarding as prescribed under R17-5-209;
 - d. Send written and dated notification of the approval or denial of the applicant's request for a waiver to the applicant within 10 days of the decision. The notice shall:
 - i. Direct the approved applicant to contact the nearest Commercial Driver Licensing office to schedule a commercial driver license pre inspection, off road, and on road tests within 30 days from date of notice; or
 - ii. Inform the denied applicant of the right to a hearing and the procedure for requesting an administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.
4. Intrastate waiver form:
 - a. The Director shall ensure that the application for waiver form reflects the terms, conditions, or limitations of the waiver.
 - b. The Director shall maintain the original waiver form.
 - c. The motor carrier shall retain a legible copy of the waiver form:
 - i. During the driver's employment as a driver, and
 - ii. For a minimum of three years after the driver ceases driving for the motor carrier.
 - d. A driver granted a waiver shall possess a legible copy of the waiver when driving a commercial motor vehicle.
5. 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.

~~D.B.~~ Subpart F—Files and Records: 49 CFR 391.51 General requirements for driver qualification files. Paragraph (b)(8) is amended by adding:

~~“or the Director’s letter of notification, granting an intrastate waiver of physical disqualification a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under this Section R17-5-208.”~~

E. The following sections are deleted:

1. 49 CFR 391.68 Private motor carrier of passengers (nonbusiness).
2. 49 CFR 391.69 Private motor carrier of passengers (business).

R17-5-205. Motor Carrier Safety: 49 CFR 382—Controlled Substances and Alcohol Use and Testing Repealed

A. 49 CFR 382.103 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver license requirements of the state of Arizona.

B. 49 CFR 382.115 Starting date for testing programs. Paragraph (a) is amended to read:

The controlled substances and alcohol use and testing requirements begin for all motor carriers on the date this Section goes into effect.

C. Paragraph (b) is deleted.

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

- A.** 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended to read by adding:
Drivers who violate the terms of an out-of-service order as prescribed under this ~~Section~~ section are additionally subject to the provisions and sanctions of A.R.S. § 28-5241.
- B.** ~~49 CFR 392.9a is deleted.~~

R17-5-208. Commercial Driver License ~~Insulin-dependent Diabetic Waiver~~ Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs or Monocular Vision; Federal Diabetes Exemption Program

- A.** A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), or (b)(10), may operate a commercial motor vehicle in intrastate commerce if:
1. Otherwise qualified to drive a commercial motor vehicle, and
 2. Granted an intrastate medical waiver by the Director.
- B.** A person eligible to apply for an intrastate medical waiver under subsection (A) shall:
1. Meet all other requirements under 49 CFR 391.49(c), Alternative Physical Qualification Standards for the Loss or Impairment of Limbs;
 2. Apply to the Department as prescribed under subsection (C); and
 3. Disclose to the Department all information required under 49 CFR 391.49(c)(2), if the information is known.
- C.** 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 waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall contain:
1. Identification of 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. DOT motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment as applicable to the type of waiver being requested.
 2. Description of the type of operation the driver applicant will be employed to perform:
 - 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 waiver application and total years of experience operating all types of commercial motor vehicles.
 3. Description of 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. Otherwise qualified:
 - a. 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 391.49;
 - b. In the case of a unilateral application, the driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391.49.
 5. Signature of applicant:
 - a. Driver applicant's signature and date signed;
 - b. Motor carrier official's signature, title, and date signed 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.

- D.** The completed intrastate waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
1. A copy of the medical report and certificate completed pursuant to 49 CFR 391.43;
 2. A 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 the examiner 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 when the intrastate medical waiver is requested due to a loss or impairment of limbs;
 - 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 the examiner 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;
 4. A skill performance evaluation performed by a federally certified state commercial driver license examiner;
 5. Application for employment:
 - a. A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or
 - b. A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect; and
 6. 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 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 report and certificate completed pursuant to 49 CFR 391.43;
 2. A current vision examination report, which a physician, ophthalmologist, or optometrist:
 - a. Completed on a form provided by the Department;
 - b. Indicated 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 yellow, as applicable to the type of medical waiver being requested; and
 - c. Mailed to the Department at the address provided on the form;
 3. A special performance evaluation administered by a certified examiner at a commercial driver license facility of the Department;
 4. An application for employment:
 - a. A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or
 - b. A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect;
 5. 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
 6. A certification statement by the driver applicant indicating 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:

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1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, in writing, any suspension, revocation, 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, 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 similar trailer types 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.** After successful completion of a skill performance evaluation, if the Director grants an intrastate medical waiver under subsection (A), the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- J.** 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, without limiting the waiver to that specific trailer type.
- K.** 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 (E)(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 (E)(4).
- L.** The intrastate medical waiver granted by the Director under subsection (A) shall be:
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 upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.
- M.** 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.
- N.** 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.
- O.** 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.
- P.** A driver applicant, or a driver applicant jointly with a motor carrier co-applicant whose principal place of business is located in Arizona, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, an intrastate medical waiver renewal application. The intrastate medical waiver renewal 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 the accident(s), number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 5. A current medical examination report;
 6. A medical waiver evaluation summary, as prescribed under subsection (D)(3), if an unstable medical condition exists;
 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).
- O.** Falsifying information on an intrastate waiver application, intrastate waiver renewal application, or other information required by this Section of either an applicant or a co-applicant motor carrier is prohibited.
- R.** The Director may deny an application for the intrastate medical waiver or may grant the waiver totally or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- S.** The Director may revoke an intrastate medical waiver after providing, to the person to whom it was issued, written notice of the proposed revocation and a reasonable opportunity to request a hearing.
- T.** 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.
- U.** A person who is not physically qualified to drive a commercial motor vehicle due to an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, as prescribed provided under 49 CFR 391.41(b)(3), but who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle if the Federal Diabetes Exemption Program grants a waiver to the person. An insulin-dependent diabetic applicant may request an application for an ~~Insulin-dependent Diabetic Waiver~~ insulin-dependent diabetic waiver by contacting the Federal Diabetes Exemption Program either by telephone at (703) 448-3094 or in writing at Federal Diabetes Exemption Program, 1200 New Jersey Ave., SE, Room W64-224, Washington, DC 20590.

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

- A.** Incorporation of federal regulations.
1. ~~The Motor Vehicle Division~~ As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following portions Parts of the Federal Hazardous Materials Regulations ~~by reference. Materials incorporated by reference are on file in the Secretary of State's Office. The incorporated Hazardous Materials Regulations are published in revised as of October 1, 2009, with no later amendments or editions as~~ 49 CFR; - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - ~~Research and Special Programs Administration~~ 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, ~~and~~ 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. ~~These parts are incorporated as printed in the October 1, 2005 edition, and those sections of the October 1, 1991 edition authorized for use under the transitional provisions of Section 171.14 of the October 1, 2005 edition and no later amendments or editions. The incorporated material incorporated by reference under subsection (A) is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001 9328, and is on file with the Division Department.~~
- B.** Application and exceptions.
1. Application.
- a. Regulations incorporated ~~in~~ 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 ~~in~~ 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.
- a. ~~Section 171.1 Purpose and scope. Paragraph (a) is amended to read:~~
- ~~"The transportation of hazardous materials by and their offering to: (1) interstate, intrastate, and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a state public authority, that are used to transport hazardous material."~~
- b. 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, ~~and~~ 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.”

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 ~~the~~ Commercial Vehicle Enforcement ~~Bureau~~, 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, political subdivision of this state that is engaged in rendering public utility service, or 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
 2. The duration of the emergency situation;₂
 3. The off-duty time provided for the affected drivers after the emergency situation concluded;₂ and
 4. Any United States Department of Transportation recordable accidents, as defined in 49 CFR 390.15, that 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.

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

- A. Scope. This Section applies to any transporter subject to:
 1. R17-5-202 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- B. Audits.
 1. The ~~Division~~ Department may conduct an audit for cause or without cause.

2. The ~~Division~~ Department may enter the premises of any transporter for the purpose of conducting an audit.
 3. The ~~Division~~ 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 ~~Division~~ Director or the transporter's out-of-state place of business.
 5. The ~~Division~~ 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 ~~Division~~ 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. R17-5-202 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- E.** Noncompliance: Failure to remedy violations. If the ~~Division~~ Department determines a transporter did not remedy a violation by the date specified in a violation notice, the ~~Division~~ Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F.** Danger to public safety. If the ~~Division~~ Director determines a written violation report establishes probable cause of danger to public safety, the ~~Division~~ 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.

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

- A.** Scope.
1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-202 through R17-5-207;
 - b. R17-5-209; and
 - c. 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 specified in subsections (B) through (I).
- B.** Initiation of proceedings, pleadings.
1. The ~~Division~~ 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 ~~Division~~ Director signs a complaint, the Executive Hearing Office as defined in A.A.C. R17-1-501 shall act on the ~~Division~~ 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 ~~Division~~ 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.

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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 ~~Motor Vehicle Division~~ 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 a respondent that fails to file an answer within 15 days after a complaint's service date in default.
 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);₂ and
 - b. Enter an order granting the relief requested in the ~~Division's~~ 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 ~~Division~~ Director shall initiate an emergency motor carrier hearing process according to R17-5-211(F) by:
 - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C);₂ and
 - b. Ordering immediate suspension of the registration of the vehicle owned or leased by a motor carrier or the driver license or driver's non-resident 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 of the complaint.
 3. The complaint and order to show cause shall contain the following:
 - a. The ~~Division~~ Department as the designated ~~as the~~ 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 ~~Division~~ 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;₂
 - b. Was responsible for the danger;₂ 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 non-resident 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 ~~Division~~ Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232(F), 28-5237(E), and 28-5238.**
- I. A respondent may request judicial review of a motor carrier safety hearing proceeding as prescribed under A.R.S. § 28-5239.**