

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 6. DEPARTMENT OF TRANSPORTATION OVERDIMENSIONAL PERMITS

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 955.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 18, 2013.

[R13-68]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
R17-6-415 New Section
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 28-366, 28-1103, 28-1104, 28-5204, and 28-7045 and 23 CFR 658
Implementing statutes: A.R.S. Title 28, Chapter 3, Articles 18 and 19, and A.R.S. §§ 28-706 and 28-1821
- 3. The effective date of the rule:**
April 24, 2013
 - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Pursuant to A.R.S. § 41-1026, this rule should be effective immediately on filing with the Office of the Secretary of State. Additionally, pursuant to A.R.S. § 41-1032, the immediate effectiveness of this rule will preserve the public peace, health or welfare. As discussed in item 6 below, this emergency rule will allow the Director of the Department of Transportation (Department) to suspend certain commercial motor vehicle weight limits or length restrictions on certain state routes or highways providing access to forest areas where immediate timber clearing and thinning is required to reduce the fire hazard to the forests and local communities and to limit the economic hardship to timber industry related businesses.
 - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
None
- 5. The agency's contact person who can answer questions about the rulemaking:**
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Department recently became aware that weight limits and length restrictions on certain state routes or highways prescribed in rule were presenting problems for counties that contain forest areas that have been subject to wildfires. The Department now seeks to address these limits and restrictions through the emergency rulemaking process established in A.R.S. § 41-1026.

Under existing rules, weight limits are prescribed for State Routes 261 and 273. The existing rules also provide weight and length restrictions on other state routes or highways providing access to forest areas. These restrictions present a real and present threat to life and property in forest areas of Apache County as well as other counties in this state. State Route 261 is the primary access to an existing 11,000 acre timber clearing and thinning project, and a 96,000 acre project is set to begin soon. These projects have stopped due to the restrictions. The important work of making the forests safe is limited, especially in the vicinity of Springerville and Eagar. There are numerous truckloads of logs decked and ready for transport on State Route 261. State Route 273 also provides access to forest areas with the same issues. Recent and expected high wind conditions and the current location of the stockpiled logs increase the fire hazard to these communities. These fuel loads and non-retrieved timber could result in a catastrophic fire such as the Wallow Fire that burned over 500,000 acres of land in Apache County and resulted in millions of dollars of economic loss, countless hours of firefighter service, and loss of animal habitat.

Timber industry related businesses, including saw mills and beam and pressure treatment plants, are being subjected to undue hardship because of these restrictions. Many local residents are employed by these businesses and potentially the impact of removing a large portion of income in Apache County would adversely affect all residents. Timber industry related businesses are dismissing employees because timber is not being hauled to the businesses because of vehicle weight limits and length restrictions.

The Department is currently engaged in the rulemaking process to update all of its overdimensional permit rules. These restrictions are being addressed in those rules. However, those rules will not be effective until September 2013. This is not early enough to prevent the threat of fire and economic impacts to these communities located in this state's forest areas.

The solution to this problem is to immediately add a rule allowing the Director of the Department, based on an engineering and traffic investigation, to suspend weight limits up to 80,000 pounds or length restrictions on portions of certain state routes or highways for commercial motor vehicles hauling divisible loads of natural forest products.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not 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:

The agency did not review or rely on any study relevant to the rules.

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

Not applicable

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

Pursuant to A.R.S. § 41-1055(D), an economic, small business, and consumer impact statement is not required as this is the initial making of an emergency rule under A.R.S. § 41-1026.

10. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

Transporters subject to this rulemaking are additionally subject to all other federal and state motor carrier safety and hazardous materials regulations currently applicable to Arizona motor carriers.

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

A permit is not required for a divisible load up to 80,000 pounds. Forest products are a divisible load.

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

The rules are not more stringent than any applicable federal law.

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

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No analysis was submitted to the Department.

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

This rulemaking incorporates no materials by reference.

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

Pursuant to A.R.S. § 41-1026, the Department has determined that the adoption of this rule is necessary as an emergency measure to avoid serious threats to public health, safety, and welfare. Current A.A.C. R17-6-412, Table 4, could result in the limitation of use of State Routes 261 and 273, as well as other state routes or highways, by commercial motor vehicles hauling divisible loads of natural forest products. This limitation could result in an increased risk of wildfires in forest areas of this state and undue economic hardship to timber industry related businesses.

While the Department is currently engaged in updating all of its overdimensional permit rules, which will include these changes, it requests emergency adoption of this rule pursuant to A.R.S. § 41-1026 in order to address this issue as soon as possible in order to help reduce the risk of catastrophic wildfires and lessen the economic burden on timber industry related businesses.

13. The date the Attorney General approved the rule:

This rulemaking was approved by the Attorney General's Office on April 24, 2013.

14. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 6. DEPARTMENT OF TRANSPORTATION
OVERDIMENSIONAL PERMITS**

ARTICLE 4. TRANSPORT RESTRICTIONS

Section

R17-6-415. State Routes and Highways; Suspension of Weight Limits or Length Restrictions; Forest Products

ARTICLE 4. TRANSPORT RESTRICTIONS

R17-6-415. State Routes and Highways; Suspension of Weight Limits or Length Restrictions; Forest Products

Notwithstanding R17-6-412, Table 4, the Director of the Department of Transportation, based on an engineering and traffic investigation, may suspend weight limits up to 80,000 pounds or length restrictions on the following portions of state routes or highways for commercial motor vehicles hauling divisible loads of natural forest products:

1. State Route 261, milepost 394.37 through milepost 412.50;
2. State Route 273, milepost 377.46 through milepost 396.84; or
3. A portion of any other state route or highway the Director of the Department of Transportation deems necessary.