

Notices of Supplemental Proposed Rulemaking

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

4 A.A.R. 2912, October 9, 1998

2. Sections affected:

R17-4-435
R17-4-435.01
R17-4-435.02
R17-4-435.03
R17-4-435.04
R17-4-435.05

Rulemaking Action:

Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-5204

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

Name: Glenn C. Johnson
Address: Department of Transportation
4747 North Seventh Avenue, Third Floor
Phoenix, Arizona 85013-2401
Telephone: (602) 255-7737
Fax: (602) 255-1624

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

The Motor Vehicle Division is amending the rules to adopt the October 1, 1996, edition of Title 49 of the Code of Federal Regulations. Specifically, the Division is adopting Subtitle B - Other Regulations Relating to Transportation, Chapter B - Federal Motor Carrier Safety Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399. The existing rule adopted the October 1, 1993, edition of the Code of Federal Regulations.

As a participant in the Motor Carrier Safety Assistance Program, Arizona has agreed to maintain rules consistent with the Federal Motor Carrier Safety Regulations. The Department of Transportation and the Department of Public Safety have certified, in the State Enforcement Plan, that the State will enforce the Motor Carrier Safety Regulations as required under the provisions of the Motor Carrier Safety Assistance Program as specified in the Code of Federal Regulations, Title 49, Parts 350 and 355.

The amendments to the rules are necessary to update the Motor Vehicle Division's rules governing motor carrier safety. Modifications to the text incorporated by reference are only intended to make the language consistent with state terminology and are not intended to make any change to the content.

6. An explanation of the substantial change which resulted in this supplemental notice:

The Motor Vehicle Division has initiated Supplemental Rulemaking in response to recommended changes to proposed Rule R17-4-435.02(6) submitted in writing by the representatives of the Transportation Section of the Arizona Attorney General's Office.

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The Division has also proposed substantial changes to R17-4-435.02(4) by modifying rather than eliminating the longstanding physical waiver program which has enabled applicants for intrastate commercial licenses to request waiver from the physical requirements for licensure.

The substantial changes herein significantly modify the criteria for inclusion in the waiver program for intrastate drivers disqualified under the provisions of 49 CFR 391.41(b)(3) but who otherwise qualify to be issued a commercial driver license.

The Attorney General's Office recommends the following changes in order to ensure that the provisions of proposed R17-4-435 comply with both the Americans With Disabilities Act (ADA) and the terms of a settlement agreement involving the State of Arizona Motor Vehicle Division and the U.S. Department of Justice.

The substantial changes proposed in this Supplemental Rulemaking ease the regulatory impact of the proposed rule by shortening the time period during which an applicant who is an insulin dependent diabetic must be free from insulin reactions. The original proposed rule set the time period as 3 years. The supplemental rule proposes 12 months or from the date the applicant began taking insulin injections, whichever is later; with no more than 1 documented hypoglycemic reaction per month as set forth in the substantially changed proposed rule.

By proposing these changes the State of Arizona and the Motor Vehicle Division avoid any violation or potential violation of the ADA and the settlement entered into with the United States Department of Justice.

The proposed amendments to R17-4-325.02(4) published on October 9, 1998, and considered at a public hearing on November 9, 1998, erroneously struck the intrastate waiver program for certain physical defects from the rule. The Division's intent was not to eliminate the waiver program, but only to make the waiver program more efficient by replacing the Waiver Board with a single Division Medical Review Officer.

R17-4-435.02(4) as published herewith is intended to accurately set forth the changes to the waiver program the Division proposes to implement.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:

There are 2 changes which will have an economic impact on intrastate motor carriers.

I. 49 CFR 40 and 49 CFR 382 are incorporated to require intrastate motor carriers to implement commercial driver drug and alcohol testing programs identical to the drug and alcohol testing programs interstate carriers have been required to implement and administer for many years.

Arizona law enforcement agencies, particularly the Department of Public Safety, strongly support implementation of 49 CFR 40 and 49 CFR 382 because the drug and alcohol testing provisions cannot be enforced by local law enforcement agencies until the provisions are adopted as a state rule.

Because the proposed drug and alcohol testing provisions must be implemented by the affected motor carriers themselves rather than by the State, it is anticipated that certification of 49 CFR 40 and 49 CFR 382 will not have an economic impact on the State or any state agency. It is believed that the proposed provisions are not in conflict with any existing statutes involving the illegal use of drugs or alcohol.

There will be an obvious economic impact on affected intrastate carriers because the drug and alcohol testing provisions will be administered by those motor carriers. This impact, however, will be no greater than the impact on interstate carriers who are currently required to implement drug and alcohol programs.

Further, the Division believes the positive impact on highway and public safety anticipated by the ability to enforce commercial driver drug and alcohol testing provisions clearly outweighs the cost of the rules.

II. The proposed amendments implement an intrastate pilot program which allows qualified individuals who are insulin dependent to be issued commercial driver licenses.

It is believed that this pilot program will affect approximately 200 potential applicants statewide who will become eligible to be employed as commercial drivers. The positive economic impact for these potential commercial licensees who have not previously been eligible for employment as commercial drivers is obvious.

The State of Arizona was recently sued by an individual whose commercial driver license was withdrawn because the individual failed to meet commercial driver licensing medical standards because of an insulin dependent diabetic condition. The lawsuit involved an allegation that the withdrawal action violated the Americans With Disabilities Act.

Because the State of Arizona and the Motor Vehicle Division are committed to absolute compliance with the ADA, this lawsuit was settled, and as part of the settlement the Motor Vehicle Division agreed to initiate the Insulin Dependent Pilot Program set forth in the proposed amendments. The settlement was entered into by the Division both because it is right to be in compliance with the ADA and because of the economic impact of damages to which the State and its citizens are potentially exposed by non-compliance with the ADA.

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It is noted that approximately 14 states have initiated similar programs, and there is no accident data in any of those jurisdictions indicating that insulin dependent diabetic commercial drivers create a highway safety problem.

Clearly the positive economic impact to potential commercial licensees who will be able to seek employment as drivers, coupled with no anticipated negative impact on highway safety, outweigh the negative economic impact the State and Motor Vehicle Division are exposed to by possible violation of the ADA.

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: Glenn C. Johnson
Address: Department of Transportation
4747 North Seventh Avenue, Third Floor
Phoenix, Arizona 85013-2401
Telephone: (602) 255-7737
Fax: (602) 241-1624

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

Date: April 26, 1999
Time: 10 a.m. until Noon
Location: A.D.O.T. Auditorium
206 South 17 Avenue
Phoenix, Arizona

The Division will accept written comments on the proposed amended rule as set forth herein until 5:00 on April 30, 1999.

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:

- R17-4-435 incorporates by reference the October 1, 1996, 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399.
R17-4-435.01 incorporates by reference the October 1, 1996, 49 CFR 390.
R17-4-435.02 incorporates by reference the October 1, 1996, 49 CFR 391.
R17-4-435.03 incorporates by reference the October 1, 1996, 49 of the CFR 382.
R17-4-435.04 incorporates by reference the October 1, 1996, 49 CFR 392 and 397.

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

ARTICLE 5. MOTOR CARRIERS

Section

- R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application
R17-4-435.01. Motor Carrier Safety: 49 CFR 390-Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information
R17-4-435.02. Motor Carrier Safety; 49 CFR 391-Qualification of Drivers
R17-4-435.03. Motor Carrier Safety: 49 CFR 391 Subpart H - Controlled Substance Testing 49 CFR 382 - Controlled substance and alcohol use testing
R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 and 397
R17-4-435.05. Civil penalties

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

- A. The Motor Vehicle Division adopts 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, 1996, (and no later amendments or editions); incorporated by reference and on file with The Federal Highway Administration, Office of Motor Carriers, the Division and the Office of the Secretary of State, as amended by these rules R17-4-435 through R17-4-435.05.
B. Definitions. The following definitions apply for purposes of R17-4-435 through R17-4-435.05 unless indicated otherwise.
1. "Bureau of Motor Carrier Safety" means the United States Department of Transportation.
2. "Co-applicant" means an employer or potential employer.
3. "Division" means the Motor Vehicle Division, Arizona Department of Transportation.
4. "Division Director" means the Assistant Director of the Arizona Department of Transportation for the Motor

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Vehicle Division or the Assistant Director's designated agent.

5. ~~"Waiver Board" means 4 individuals appointed by the Division Director to make recommendations on applications for intrastate waivers.~~

65. "49 CFR" means Title 49, Code of Federal Regulations.

C. Application. The regulations of 49 CFR, incorporated by subsection (A) apply as amended by R17-4-435.01 through R17-4-435.04 to:

1. Motor Carriers as defined in A.R.S. § 28-2401~~5201~~ except motor carriers transporting passengers for hire in a vehicle with a design capacity of 6 or fewer individuals.
2. All vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials ~~in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.~~

R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

49 CFR 390, as incorporated in these rules, is amended as follows:

A.1. 49 CFR 390.3 General applicability: is amended as follows:

1. a. Paragraph (a) is amended to read:

The regulations adopted in this rule are ~~shall be~~ applicable to all motor carriers operating in Arizona and all vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

2. b. Paragraph (b) is amended by adding the following sentence at the

In addition to the requirements specified in 49 CFR 383, motor carrier drivers domiciled in Arizona who operate Commercial Motor Vehicles as defined in A.R.S. § 28-402 3001 shall comply with the requirements of A.R.S. Title 28, ~~Chapter 4~~ Chapter 8 and any rules promulgated under that Chapter.

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

Motor carriers operating in Arizona in the furtherance of a commercial enterprise, shall comply with the financial responsibility requirements specified in A.R.S. Title 28, Chapter 72, Article 72, and 49 CFR 387.

B.2. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:

1a. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382, the term has the meaning set forth at 49 CFR 382. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements of either 49 CFR 383 or A.R.S. § 28-402 3001, the term has the meaning set forth at 49 CFR 383 or A.R.S. § 28-402 3001. If the term "Commercial Motor Vehicle" or "CMV" is not used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 383 or A.R.S. § 28-402 3001, the term means a self-propelled motor-driven vehicle or vehicle combination, used on a public highway in this state in the furtherance of a commercial enterprise, which:

a. i. ~~Has a declared gross weight of 20,001 gross vehicle weight rating (GVWR) as a single vehicle or a combination gross vehicle weight rating (CGVWR) of 18,001 pounds or more; or,~~

b. ii. ~~Transports passengers for hire and has a design capacity of 7 or more individuals; or~~

c. iii. ~~Transports hazardous materials in an amount requiring marking or placarding pursuant to R17-4-436.~~

2. b. "Exempt intracity zone" is deleted from R17-4-435.01 through R17-4-435.04 and has no application in these rules.

3. e. "For-hire motor carrier," ~~"private motor carrier of passengers," and "private motor carrier of property;" "private motor carrier," "private motor carrier of passengers (business)" and "private motor carrier of passengers (nonbusiness)"~~ are deleted from R17-4-435.01 through R17-4-435.04 and the term "motor carrier" is used.

4. d. ~~"Gross combination weight rating" (GCWR) and "Gross vehicle weight rating" (GVWR) mean declared gross weight as defined in A.R.S. § 28-206. Combination gross vehicle weight rating (CGVWR) and gross vehicle weight rating (GVWR) has the meaning prescribed in 49 CFR 390.5, Definitions.~~

5. e. "Regional Director" means the Division Director.

6. f. "Special agent" means an officer or agent of the Department of Public Safety, the Motor Vehicle Division, or of a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.

7. g. "State" means a state of the United States and the District of Columbia.

C.3. 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.4. 49 CFR 390.21 Marking of motor vehicles. Paragraph (a) is amended to read:

This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier that is not subject to the marking requirements of the U.S. Department of Transportation, shall mark its vehicles with the letters "AZ" ~~and its Arizona Use Fuel/Motor Carrier account number. No identification number marking shall be required for a motor carrier exempt from the Use Fuel/Motor Carrier License requirement the company name or business trade name and the city and state.~~

E.5. 49 CFR 390.23 Relief from regulations.

1. a. Paragraph (a) is amended to read:

The regulations contained in 49 CFR 390 through 397 shall ~~do not~~ apply to a motor carrier that is not subject to federal jurisdiction and that operates a commercial motor vehicle used or designated to provide relief during an emergency.

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

3. e. Paragraph (a)(2)(A) is amended as follows:

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

4. d. Paragraph (a)(2)(B) is amended as follows:

The Arizona Department of Public Safety, Special Services Region, determines that a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety, Special Services Region determines that relief from these regulations

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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.e. Paragraph (b) is amended as follows:
"Interstate commerce" means in the furtherance of a commercial enterprise.

6. 49 CFR 390.25 Extensions of relief from regulations - emergencies is amended as follows:

A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety, Special Services Region. The motor carrier shall give full details of the additional relief requested. Taking into account the severity of the emergency and the nature of the relief services to be provided by the motor carrier, the Arizona Department of Public Safety shall extend a period of relief with any restrictions deemed necessary.

7. 49 CFR 390.27 Locations of regional motor carrier safety offices is amended to read:

To make a request for relief from these regulations, the motor carrier requesting relief shall contact the Arizona Department of Public Safety, Special Services Region, Telephone (602) 223-2212.

R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers

49 CFR 391, as incorporated in these rules, is amended as follows:

A.1. 49 CFR 391.2 General exemptions. The exceptions for "exempt intracity zone drivers" in paragraph (d) are deleted.

B.2. 49 CFR 391.11 Qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation; and at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of reportable quantities of hazardous substances, hazardous wastes required to be manifested or hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

C.3. 49 CFR 391.49 Waiver of certain physical defects.

1.a. Paragraph (a) is amended by adding:

An individual who is not physically qualified to drive under 49 CFR 391.41(b)(1), (b)(2) ~~(b)(3)~~ or (b)(10) who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle in intrastate commerce if the Division Director has granted an intrastate waiver to the individual. Application for an intrastate waiver shall be submitted in accordance with subsection (4). If granted, an intrastate waiver shall be for a period not exceeding 2 years. An individual granted an intrastate waiver may transfer the intrastate waiver from an original employer to a new employer upon written notification to the Division Director stating the name of the new employer and the type of equipment to be driven.

2.b. 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. The application shall be addressed to the Motor Vehicle Division, Medical Review Program, P.O. Box 2100, Mail Drop ~~534~~ 511M, Phoenix, Arizona 85001-2100. The driver applicant shall comply with all the requirements of 49 CFR 391.49(c), "Waiver of certain physical defects", except paragraphs (c)(1)(i) and (c)(1)(iii). The driver applicant shall respond to the requirements of 49 CFR

391.49(c)(2)(ii) through (c)(2)(v), if the information is known.

3.e. Paragraph (c)(1)(iv) is amended to read:
A description of the driver applicant's limb impairment, diabetic condition or visual impairment for which waiver is requested.

4.d. 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.e. Paragraph (d)(3)(i)(B) is amended by adding:
Or a statement by the examiner that the applicant for an intrastate waiver has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of at least 70 degrees in 1 direction and ~~35 degrees in the other direction~~ peripheral measurement of the horizontal meridian of the applicant's dominant eye; and the ability to distinguish the colors of traffic signals and devices showing standard red, green, and amber.

6.f. Paragraph (d)(3)(iii) is added:
The medical evaluation for a driver applicant disqualified under 49 CFR 391.41(b)(3) shall include the requirements found in 49 CFR 391.64.

7.g. Paragraph (j) is amended by adding:
An individual with a distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of at least 70 degrees in 1 direction and 35 degrees in the other direction of the horizontal meridian of the individual's dominant eye; and the ability to distinguish the colors of the traffic signals and devices showing standard red, green and amber, shall not transport any amount of hazardous materials required to be marked or placarded pursuant to R17-4-436 nor operate a vehicle for the purpose of transporting passengers pursuant to R17-4-435.

D.4. Waiver procedures for intrastate drivers.

1.a. The Division Director shall appoint the Division's Medical Review Officer to review requests for physical waivers. ~~review and approve or deny each waiver application.~~

i. Appoint a Waiver Board consisting of the Division's Driver Waiver Program Manager or designated alternate, the Division's Medical Review Officer and 2 other individuals to consider requests for physical waivers; and

ii. Approve or deny a physical waiver after consideration of the recommendation submitted by the Waiver Board

2. The Medical Review Officer shall:

b. The Waiver Board shall:

i. Meet within not less than 20 or more than 30 days of receipt of an intrastate waiver application;

ii. Review the application to ensure that all provisions of 49 CFR 391.49 are met;

a. Review the application to ensure that all provisions of 49 CFR 391.49 are met;

iii. Take necessary testimony and accept documentation and information pertinent to the application;

b. Take necessary testimony and accept documentation and information pertinent to the applications;

iv. Ensure that drivers applying for an intrastate waiver of the visual requirements:

c. Ensure that drivers applying for an intrastate waiver of the visual requirements:

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~~(1) Have driven the type of vehicle to be operated under the waiver for at least 2 of the previous 5 years; and (2) Will not transport passengers for hire or transport reportable quantities of hazardous substances, hazardous wastes required to be manifested or hazardous materials required to be marked or placarded pursuant to R17-4-436;~~

~~i. Have driven the type of vehicle to be operated under the waiver for at least 2 of the previous 5 years, and~~

~~ii. Will not transport passengers for hire to transport reportable quantities of hazardous substances, hazardous wastes required to be manifested or hazardous material required to be marked or placarded pursuant to R17-4-436;~~

~~d. Approve or deny the waiver;~~

~~v. Submit a written recommendation to the Division Director to approve or deny the waiver; and~~

~~e. Notify the applicant by mail of:~~

~~i. To contact the nearest CDL examiner in order to take the CDL pre-inspection, off-road, and on-road tests within 60 days from date of notice.~~

~~ii. Of the results of the decision concerning approval or denial of the waiver within 10 days of the decision.~~

~~vi. Notify the applicant by mail of:~~

~~(1) The date, time, and place of the review at least 5 days before the review; and~~

~~(2) The results of the Division Director's decision concerning approval or denial of the waiver within 10 days of the decision.~~

~~3.e. The applicant shall submit an application to the Division pursuant to 49 CFR 391.49 (a), (b), (c) and (d) as amended by this rule; and~~

~~ii. May request a summary review or may appear in person or through counsel at the review.~~

~~4.d. Waiver form.~~

~~a.i. The waiver form shall reflect the terms, conditions, or limitations of the waiver.~~

~~b.ii. The Division shall maintain the original waiver.~~

~~c.iii. The motor carrier shall retain a legible copy of the waiver form as long as the driver is employed as a driver and for 3 years thereafter.~~

~~d.iv. A driver who is granted to whom a waiver form has been granted shall have a legible copy of the waiver form in the driver's possession when driving a commercial motor vehicle.~~

~~5. e. Hearings and appeals. If the Division Director has denied the waiver application, the applicant may request a hearing with the MVD Executive Hearing Office within 15 days from the date of the notice pursuant to administrative rules R17-4-901 through R17-4-912.~~

~~E.5. Subpart F - Files and Records. 49 CFR 391.51 Driver qualification files. Paragraph (b)(2) is amended by adding the following text:~~

~~or the Waiver Board's Division Director's letter of notification, granting an intrastate waiver of physical disqualification, if a waiver is granted pursuant to this rule.~~

~~F.6. 49 CFR 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs. This section is amended to read:~~

~~49 CFR 391.64 Pilot study diabetes waiver program.~~

~~A pilot study program for insulin dependent diabetics shall be created to process, monitor and evaluate the feasibility of~~

~~establishing a waiver program for intrastate drivers who are disqualified under the provisions of 49 CFR 391.41(b)(3), but who are otherwise qualified.~~

~~1. The pilot study program shall be administered by the medical review section, and which may approve or deny applications for waivers.~~

~~2. The study program begins on the effective date of this rule amendment and terminates 2 years from that date.~~

~~3. All waivers issued through the study program shall terminate upon the expiration of the study program.~~

~~4. The Division Director may extend the study, or establish a permanent waiver process.~~

~~Paragraph (a) is amended to read:~~

~~5. Insulin-controlled dependent diabetics may apply for a waiver, restricted to the State of Arizona for participating in the 2-year pilot study if:~~

~~Paragraph (a)(2)(iii) is amended to read:~~

~~a. Submit Blood glucose logs are submitted to the endocrinologist or medical examiner at an annual examination or at any time as directed by the medical review section.~~

~~Paragraph (a)(2)(vii) is added:~~

~~b. The applicant has a driving record which meets the minimum requirements of safe driving as specified under applicable federal and state safety regulations and has no serious traffic violations, no periods of driver disqualification or reportable accidents for a period of 3 years prior to submitting the waiver application.~~

~~Paragraph (a)(2)(viii) is added:~~

~~c. A separate signed statement from an examining ophthalmologist is submitted that the applicant has been examined and that the applicant does not have unstable proliferative diabetic retinopathy, unstable advancing disease of blood vessels in the retina, and has stable acuity of at least 20/40 Snellen in each eye, with or without corrective lenses.~~

~~Paragraph (b) is amended to read:~~

~~6. d. The Division Director may suspend for life the commercial vehicle operating privilege of any driver who, after issuance of a waiver under this section, fails to meet the conditions imposed by this section, or is found to have committed a serious traffic violation or been involved in a reportable accident related to the driver's medical condition.~~

~~Paragraph (e) is added:~~

~~7. e. The provisions of this section shall not be valid if enforcement of these provisions would result in the loss of or the disqualification of federal funding for any state agency or program.~~

~~Paragraph (d) is added:~~

~~8. f. An insulin dependent diabetic commercial driver license applicant shall provide:~~

~~a. A board-certified or board-eligible endocrinologist with a complete medical history including the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes and follow-up reports, and reports of any hypoglycemic insulin reactions within the prior three years, 12 months or from the date the applicant started using insulin injections, whichever is later.~~

~~b. (b) An examination by a board certified or board-eligible endocrinologist conducted after July 29, 1993. The complete medical examination shall consist of a~~

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comprehensive evaluation of the applicant's medical history and current status, including a review of:

- i. Fasting blood studies glucose, glycosylated hemoglobin/Hb Alc I including lab reference page and urinalysis performed during the last 6 months;
 - ii. Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken.
- 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 UU determinations:
- i. The endocrinologist is familiar with the applicant's medical history for the past three years 12 months whether through actual treatment over that time or through consultation with a physician who has treated the applicant during that time;
 - ii. The applicant has been using insulin to control the diabetes from the date of the application back to the date the three years of driving experience began. The applicant is free from insulin reactions including severe hypoglycemia and hypoglycemia awareness, and has had no more than 1 documented hypoglycemic reaction per month in the previous 12 months or from the date the applicant started using insulin injections, whichever is later;
 - iii. The applicant does not have severe hypoglycemia, episodes of altered consciousness requiring the assistance of another person to regain control;
 - iv. The applicant does not have hypoglycemia unawareness or the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness);
 - (v) Within the prior three years, the applicant has not had a hypoglycemic reaction, at any time, that resulted in any change in mental status that would have been, in the endocrinologist's opinion, detrimental to safe driving;
 - v. The applicant's diabetic condition will not adversely affect his/her the applicant's ability to operate a commercial motor vehicle; and,
 - vi. The applicant has been educated in diabetes and its management, thoroughly informed of and understands other procedures which shall be followed to monitor and manage his/her the applicant's diabetes and what procedures should be followed if complications arise.

Paragraph (c) is added:

d.(g) An applicant for a commercial driver license who is an insulin dependent diabetic shall meet the following requirements:

- i. Have a driving record for a 3-year period that contains no suspensions or revocations of the applicant's driver license for the operation of any motor vehicle including personal vehicles except suspensions or revocations due to non-payment of fines;
- ii. Contains no involvement in an accident as defined in 49 CFR 390.5 for which the appli-

cant received a citation for a moving traffic violation while operating a commercial motor vehicle;

- iii. Contains no convictions for a disqualifying offense described in 49 CFR 383.51, or more than 1 serious traffic violation defined in 49 CFR 383.51 while operating a commercial motor vehicle; and,
 - iv. Contains no more than 2 convictions for any other moving traffic violations while operating a commercial motor vehicle.
- e. The applicant shall immediately report any arrest, citation, or conviction to the MVD Medical Review Program. Failure to do so may result in a denial or rescission of the waiver.

G. The following sections shall be deleted.

- 1. Section 391.68 Private motor carrier of passengers.
- 2. Section 391.69 Driver operating in Hawaii.
- 63. Subpart G - Limited Exemptions 49 CFR 391.71 Intrastate drivers of vehicles transporting combustible liquids, exemptions in this Section are deleted.
- 4. Section 391.73 Private motor carrier of passengers (business).

R17-4-435.03. Motor Carrier Safety: ~~49 CFR 391 Subpart H - Controlled Substance Testing~~ 49 CFR 382 - Controlled substance and alcohol use testing

A. ~~49 CFR 391 as incorporated in these rules is amended as follows:~~

- 1. ~~49 CFR 391.81 Purpose and scope. Paragraph (b) is amended by deleting "Federal".~~
- 2. ~~49 CFR 391.83 Applicability. Paragraph (a) is amended to read:
This subpart applies to all motor carriers as defined in A.R.S. § 28-2401, operating commercial motor vehicles as defined in subsection (3) of this rule.~~
- 3. ~~49 CFR 391.85 Definitions. The definition for "Commercial motor vehicle" in this section is amended to read: "Commercial motor vehicle" means a motor vehicle operated by a motor carrier which either:
a. Has a declared gross weight of 26,001 or more pounds;
b. Is designed to transport 16 or more people, including the driver; or
c. Is used in the transportation of hazardous materials in an amount which requires the vehicle to be placarded under R17-4-436.49~~
- 4. ~~CFR 391.87 Notification of test results and recordkeeping. In paragraph (g), the term "federal highway administrator" means the Division Director.~~
- 1. ~~49 CFR 382.1 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver's license requirements of the State of Arizona.~~
- 2. ~~49 CFR 382.115 Starting date for testing programs. This section is amended to read:
The controlled substance and alcohol use and testing requirements commence for all motor carriers on the date this rule goes into effect.~~
- 3. ~~Paragraph (b) is deleted.~~
- 4. ~~Paragraph (c) is deleted.~~

R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 and 397

49 CFR 392 and 397 as incorporated in these rules are amended as

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follows:

1. 49 CFR 392.5 Intoxicating beverage. Paragraph (e) is amended to read:
Drivers who violate the terms of an out-of-service order under this Section shall be subject to the provisions and sanctions of A.R.S. § 28-2404 5232.
2. 49 CFR 392.30 Lighted lamps; moving vehicles. Paragraph (a) is amended to read:
During the period from sunset to sunrise;
3. ~~Section 397.5 Attendance and surveillance of motor vehicles. Paragraph (d)(3) is amended to read:
A safe haven is an area specifically approved in writing by state or federal governmental authorities for the park-~~

~~ing of unattended vehicles containing Class A or Class B explosives as defined in 49 CFR 173.53 "Definition of Class A explosives" and 173.88 "Definition of Class B explosives".~~

R17-4-435.05. Civil penalties

For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles which are required to be placarded, the higher level of civil penalty pursuant to A.R.S. § 28-2406 5238 shall apply.