

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

[R06-142]

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R14-2-2101	New
R14-2-2102	New
R14-2-2103	New
R14-2-2104	New
R14-2-2105	New
R14-2-2106	New
R14-2-2107	New
R14-2-2108	New
R14-2-2109	New
R14-2-2110	New
R14-2-2111	New
R14-2-2112	New

Rulemaking Action

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

Authorizing statute: Arizona Constitution, Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, and 40-322.

Implementing statute: Not applicable

3. The effective date of the rules:

June 19, 2006

The Commission approved these rules at an open meeting on November 8, 2005. These rules were promulgated to protect the constitutionally mandated privacy of Arizona citizens. Under A.R.S. §§ 41-1044 AND 41-1057 these rules had to be submitted to the Office of the Attorney General for approval. Therefore, pursuant to A.R.S. § 41-1032, the effective date of these rules is 60 days after a certified original and two copies of the rules and preamble are filed in the office of the Secretary of State and the time and date are affixed as provided in A.R.S. § 41-1031.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 4702, November 19, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 4732, November 26, 2004

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

Name: Maureen A. Scott, Senior Staff Counsel, Legal Division

Address: Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The rules regulate dissemination of individual Customer Proprietary Network Information (CPNI) by telecommunications carriers. Telecommunication carriers are in a position to collect customers' private account and personal calling information. This information is sensitive and the collection and dissemination by service providers raises serious privacy issues. The Commission believes these rules are necessary to provide adequate notice to make an informed decision and sufficient protection to safeguard the privacy interests of Arizona citizens.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, 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

8. 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:

The Commission believes that the rules are necessary to protect consumers' privacy rights. These rules will ensure appropriate authorization and dissemination measures are taken and will enhance public safety, quality of service and are in the best interest of all citizens in the state of Arizona.

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

Telecommunications carriers, as defined in rule R14-2-2102(A)(12), may incur costs associated with consumer notification requirements, annual reminders and confirmation of customers' CPNI elections, and additional verification procedures. Carriers that fail to comply with the rules may face penalties or sanctions. The rules may lead to more efficient use of the CPNI as a result of knowing and informed consent by consumers. Telecommunications carriers may also benefit from a decrease in consumer complaints and increased goodwill as a result of the rules. Most telecommunications carriers are not small businesses as defined by A.R.S. § 41-1001.19. Telecommunications carriers that are small businesses must comply with the rules when enacted. The Commission has tried to reduce the impact on small business by creating rules which are deemed to be the least intrusive and least costly means of achieving the whole purpose of the rulemaking. Consumers and small businesses that are not telecommunications carriers will benefit from important safeguards set forth to ensure that customers are routinely informed of their rights with respect to Customer Proprietary Network Information and that the decision to release this private information is both knowing and informed.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Some clarifying language has been incorporated into the following sections in response to the comments of the carriers and the Arizona Attorney General. The clarifying modifications do not substantially change the rules as published in the *Register*, therefore no supplemental rulemaking is required.

R14-2-2103(A)(1)

Staff addressed Arizona Wireless Carriers, MCI and Sprint carrier concerns regarding specific reference to "Total Services Approach" and modified this section for clarity.

Before:

A. A telecommunications carrier may, subject to opt-out approval or opt-in approval:

- 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors:**

After:

A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:

- 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already subscribe to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;**

R14-2-2105(A)(1)

AT&T and Citizens raised issue of clarify for customers understanding of complex definitions. MCI and Sprint concurred. Staff agreed that the regulatory definition of CPNI may cause confusion to customers and proposed the following clarification language.

Before:

- A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or elec-**

tronic methods. The contents of any such notification must:

1. Include the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

After:

A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:

1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

11. A summary of the comments made regarding the rule and the agency response to them:

R14-2-2101. Application of the Rule

Issue: Qwest and Arizona Wireless Carriers contended, and MCI and Sprint concurred, that the rules should apply only to intrastate CPNI. Qwest argued that the Federal Communications Commission's ("FCC") Third Report and Order (FCC 02-214 Rel. July 25, 2002) ("FCC Order") preempts Staff's CPNI rules.

Staff contended that the rules apply to all CPNI gathered by telecommunications carriers that provide telecommunications service in Arizona. Staff stated that the Arizona rules incorporate the FCC rules, going beyond them in certain instances. Staff further noted that the FCC's Order allows states to go beyond federal standards for purposes of the release of CPNI in a particular state; therefore, the Arizona rules apply to all CPNI released in Arizona.

Analysis: The rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customers' concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules were narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules will place on the carriers.

Resolution: No change was necessary.

R14-2-2102. Definitions

R14-2-2102(10)

Issue: AT&T stated its understanding that telephone numbers are considered published unless the customer specifically requests that the telephone number not be published; thereby the authorization to publish is implied. AT&T was concerned that defining "published" as "authorized for voluntary disclosure by the individual identified in the listing" creates a substantive requirement that carriers seek express authorization in order to publish a customer's telephone number in directories.

Analysis: The term "published" appears only once outside of the definitions Section. Specifically, R14-2-2105(A) provides that "A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use." This rule is consistent with the practice of implied authorization to publish and establishes no substantive duty on the carriers.

Resolution: No change was required.

R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services

R14-2-2103(A)(1)

Issue: Citizens stated that Staff's rules require opt-in or opt-out for marketing any telecommunications related services to a particular customer and contended that this conflicts with the FCC rules.

Analysis: See discussion of R14-2-2101, above.

Resolution: No change was necessary.

R14-2-2103(D)

Issue: Qwest, Sprint, Arizona Wireless Carriers, MCI, Citizens and Verizon objected to the requirement that carriers execute a proprietary agreement with any entity with whom the carrier shares CPNI. This requirement applies to affiliates that provide communications-related services. Carriers took the position that carrier affiliates share an interest in maintaining the customer relationship, and therefore misuse of CPNI by affiliates is not likely. These carriers further objected because Staff's rules require a proprietary agreement with joint ventures, independent contractors and affiliates, where the FCC rules require a confidentiality agreement only with the first two types of entities, and not with affiliates.

Staff stated that the carriers' assurances regarding affiliates' interest in maintaining the customer relationship is insufficient to ensure the protection of CPNI. Therefore, Staff stated, to the extent that affiliates providing telecommunications services do not fall under the jurisdiction of the Corporation Commission, proprietary agreements are necessary to ensure that the CPNI disseminated to those entities remains confidential.

Analysis: It is axiomatic that CPNI is sensitive personal information. The Commission took the position that CPNI is sufficiently important to warrant the security of such proprietary agreements to ensure that customers' information is protected.

Resolution: No change was necessary.

Issue: Arizona Wireless Carriers, MCI and Sprint noted that the Total Services Approach was not explicitly set forth in the rules, and stated that the rules contradict the Total Services Approach because it requires opt-out or opt-in approval for the purpose of marketing communications-related services to a customer.

Staff stated its intention to use the Total Services Approach, and addressed this concern by recommending the following italicized language be added to R14-2-2103(A)(1);

A telecommunications carrier may, subject to opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing *to that customer* communications-related services *of a category to which the customer does not already subscribe to that customer*, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

An additional clarification was made to prevent confusion regarding when a telecommunications carrier may disclose CPNI subject to this rule. This clarification was addressed with the following italicized language added to R14-2-2103(A)(1):

A telecommunications carrier may, subject to *obtaining* opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

Analysis: The Commission agreed with Staff. It believed that the clarifying language describing when CPNI may be disseminated was appropriate.

Resolution: The Commission adopted the changes set forth above in order to ensure that Arizona permits carriers to use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings to its customers among the categories of service to which a customer already subscribes and to require opt-in or opt-out approval to provide or market service offerings to customers among the categories of service to which the customer does not already subscribe.

R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services

R14-2-2104(D)

Issue: MCI and Sprint concurred with Qwest's objection to the requirement that carriers secure express written customer consent before CPNI may be transferred to unaffiliated third parties.

Analysis: To the extent that third parties and affiliates that do not provide telecommunications services do not fall under the jurisdiction of the Corporation Commission, written consent is necessary to ensure that the CPNI disseminated to those entities remains confidential. The Commission believed that requiring express written customer consent prior to transferring CPNI to unaffiliated third parties and affiliates that do not provide communications-related services is a reasonable method to ensure protection of that sensitive customer information.

Resolution: No change was necessary.

R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice

R14-2-2105(A)(1)

Issue: AT&T and Citizens stated, and MCI and Sprint concurred, that the requirement that the notice contain the definition of CPNI contained in Section 222 of the Act would result in confusion for the customer. The carriers stated that the FCC requirement that the notification specify the type of information that constitutes CPNI permits the telecommunications carrier flexibility and aids in reader comprehension.

Staff agreed that the regulatory definition of CPNI may cause confusion to customers; therefore Staff recommended that the following italicized language be added to R14-2-2105(A)(1):

A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 1. Include *language the same as or substantially similar to* the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

Analysis: Legal terminology may be overly complex and difficult to understand for the customer.

Resolution: The Commission agreed with and adopted Staff's recommended changes as set forth above to ensure that customers will receive an accurate but straightforward explanation of CPNI notice.

R14-2-2105(A)(4)

Issue: MCI and Sprint joined in Qwest's contention that the requirement that the notice inform the customer that CPNI includes "all information related to specific calls initiated or received by a customer" misstates existing law.

Analysis: CPNI is defined at 47 USC § 222(h)(1)(A) and (B), revised 1999, and at rule R14-2-2102(5), as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

R14-2-2105(A)(1) requires that customers are given notice of what information makes up CPNI with a more detailed statement. Although R14-2-2105(A)(4) does not state the definition verbatim, it does not misstate the existing definition in 47 USC § 222(h)(1)(A) and (B), revised in 1999.

Resolution: No change was necessary.

R14-2-2105(A)(6)

Issue: MCI and Sprint concurred in Qwest's objection to the language of this rule. Qwest preferred language such as that of the federal rules, that "[c]arriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI." 47 CFR 64.2008(c)(3).

Analysis: The language of Staff's rule requires that notification to obtain opt-in approval must "[i]nform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes." Carriers preferred the broader language they proffered; however, they failed to convince the Commission that their proposed language has a significant benefit versus Staff's language. The language proposed by the carriers allows for potential advisement of any consequence, relevant or not, that may result from lack of access to CPNI. Because CPNI is a sensitive and highly touted commodity, the Commission did not wish to inadvertently authorize carriers to provide disincentives for customers who choose not to opt-in or who choose to opt-out. Therefore, the Commission preferred Staff's language.

Resolution: No change was necessary.

R14-2-2105(B)(1)

Issue: Sprint, MCI and Citizens objected to the requirements of this section, R14-2-2105(B)(2), and R14-2-2105(C)(2) that written notices be mailed separately or as a bill insert within a clearly marked envelope, and that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

Staff contended that written and electronic notices sent to customers to obtain opt-in or opt-out approval must be clear and easy for customers to read. After consideration of industry comments on Staff's Second Draft Rules, Staff amended R14-2-2105(B)(1) to allow carriers to include written notices within customer bills. Staff maintained that if written notice is included as a bill insert, the envelopes should be clearly marked to inform customers that important privacy information is enclosed. Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that minimum requirements governing content and format of written or electronic notices ensure that customers have the opportunity to make informed decisions as to the dissemination of their CPNI.

Analysis: The Commission agreed with Staff.

Resolution: No change was necessary.

R14-2-2105(B)(2)

Issue: Qwest, Citizens, MCI and Sprint objected to the requirement of this section that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rule.

Analysis: See discussion, *supra*, regarding R14-2-2105(B)(1).

Resolution: No change was necessary.

R14-2-2105(B)(3)

Issue: Citizens, MCI and Sprint stated that the requirements of this section and R14-2-2105(C)(3) to print written or electronic notice in both English and Spanish unless the customer has previously expressed a preferred language is too inflexible. Citizens noted that the FCC rules authorize carriers to translate written or electronic notices into a language appropriate to the specific customer, which may not be Spanish.

Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that R14-2-2105(B)(3) and R14-2-2105(C)(3) afford the flexibility desired by carriers by providing for a previously-established preferred language of a customer without specifying that this language must be English or Spanish.

Analysis: Both English and Spanish are languages spoken with great frequency in Arizona. The requirement that notices be provided in both languages to customers is an appropriate baseline for the communities of Arizona to ensure understanding, and yet allows for customers whose primary language may be other than English or Spanish to request notice in their own language.

Resolution: No change was necessary.

R14-2-2105(C)(2)

Issue: Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

Analysis: See discussion, *supra*, regarding R14-2-2105(B)(1).

Resolution: No change was necessary.

R14-2-2105(C)(3)

Issue: Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

Analysis: See discussion, *supra*, regarding R14-2-2105(B)(3).

Resolution: No change was necessary.

R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI

Issue: Qwest, Sprint, Arizona Wireless Carriers, MCI, Cox Arizona Telecom and Citizens objected to this section, claiming that it is an unconstitutional restriction on free speech.

Staff acknowledged that cases cited by the carriers have found that an opt-in approval process prior to the release of CPNI is unconstitutional in some cases. However, Staff stated that the rules are consistent with the FCC rules with respect to the approval mechanism required for release of a customer's CPNI. Staff noted that this section adds a verification requirement, which has not been the subject of judicial review. The rule gives carriers one year to verify a customer's CPNI release election and allows carriers to request additional time if verification is not accomplished within a year.

Analysis: The United States Supreme Court established a four-prong test on the constitutionality of regulating commercial speech in the matter of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980). First it must be determined whether the expression in question is protected by the First Amendment; in this, a case of commercial speech, the expression must concern lawful activity and not be misleading, and second; whether the asserted governmental interest in regulating the commercial speech is substantial. If the answer to the first two prongs is affirmative, the third consideration is whether the regulation directly advances the governmental interest asserted, and, fourth, it must be determined whether the regulation is narrowly tailored to serve that interest. *Id.* at 566.

Carriers and Staff disagreed whether the proposed CPNI rules infringe on carriers' First Amendment rights. Carriers asserted that the restriction on the use of CPNI is an infringement on their right to commercial speech and cited to *U.S. West v. the Federal Comm. Comm'n*, 182 F.3d 1224 (10th Cir. 1999). Staff argued that the CPNI restrictions amount only to regulation of carriers' methods of collecting and using CPNI, which Staff asserted does not limit carriers' communication or expressive activities toward a willing audience.

To the extent that the rules implicate First Amendment issues relating to carriers' abilities to communicate customer CPNI with affiliates or other third parties, The Commission agreed that they are engaging in commercial speech that is lawful and is not misleading. The Commission also believed that the dissemination of CPNI by a regulated entity implicates a substantial government interest in protecting the rights of ratepayers to control that dissemination.

Subscribing to some form of telecommunications service is inevitable in all but the narrowest of circumstances. What telecommunications carriers do with the CPNI of these customers, a valuable yet sensitive commodity, is then out of customers' control except through market influence and state regulation. Staff's CPNI rules amount to time, place, and manner restrictions. Staff cited several national consumer surveys by Harris Interactive showing that customers are concerned that "companies they patronize will provide their information to other companies without [their] permission" (Staff's Response Comments, filed Jan. 19, 2005, at 9 (citations omitted)) and that customers are taking responsibility for protecting their own privacy.

In this case, the CPNI rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customer's concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules are narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules place on the carriers.

Resolution: In response to comments received from the Arizona Attorney General's Office, the Commission added standards for carriers to receive an extension of time under R14-2-2108(g) of the rules. This change is a nonsubstantial change since the Commission is merely clarifying an existing rule. The standards the Commission added are as follows:

- I. The Commission may grant an extension(s) of time to complete the verification process if the applicant demonstrates items 1 through 4 below:
 1. The applicant has used its best efforts to obtain customer verification of their CPNI sharing preference. One means of demonstrating this would be for the applicant to show that it has achieved verification with respect to a minimum of one-third of its customers during the initial or extension period for which the company used the opt-out approval mechanism; and
 2. The applicant has contacted each of its customers (for whom it has used an opt-out approval mechanism) at least once in the first half of the verification period and at least once during the second half of the verifica-

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- tion period (if it was unsuccessful in obtaining the customer's verification during its initial contact) to verify the customer's CPNI sharing preference; and
3. To the extent practicable, one of the applicant's contacts to the customer should be by phone to the customer's primary residence or telephone number by a person speaking the customer's language preference (English or Spanish). If the customer is not there, it should allow, if technically feasible, the customer the option of responding via message return; and
 4. The applicant presents a plan for achieving verification for its remaining customers. In its plan, the applicant must demonstrate that the additional time it is requesting is no longer than is reasonably necessary to complete items 1 and 3 again for any customers it was unsuccessful in contacting during the initial verification period, and to complete any additional measures designed to ensure customer contact during the extension period.

R14-2-2109. Confirming a Customer's Opt-In Approval

Issue: Qwest, MCI and Sprint objected to the requirement that carriers provide a customer written confirmation within 10 days of receiving that customer's opt-in approval. The written confirmation must be mailed or e-mailed separately, and carriers state that this requirement is unnecessary, burdensome and costly.

Staff stated that a customer's opt-in approval allows a carrier to use, disclose, or permit access to that customer's CPNI to third parties and affiliates that do not provide communications-related services, and which thereby do not fall under the jurisdiction of the Corporation Commission. Staff stated that a customer should have the opportunity to notify the carrier in the event that the customer's opt-in approval was unintended or erroneous.

Analysis: The Commission agreed with Staff that this requirement is necessary and find that the benefit of protecting a customer's choice on use of CPNI outweighs the burden and cost of the confirmation process.

Resolution: No change was necessary.

R14-2-2110. Reminders to Customers of Their Current CPNI Release Election

Issue: Qwest, MCI and Sprint objected to the requirement that carriers provide annual reminders to customers that have given opt-in or opt-out approval of their election regarding CPNI. The annual reminders must be mailed or e-mailed separately from the customer's bill and advertising or promotional information. Carriers argued that this requirement is unnecessary, burdensome and costly.

Staff stated that customers should be kept informed of their elections regarding the treatment of the CPNI, and annual reminders ensure that customers' ongoing approval continues to be knowing and informed.

Analysis: The Commission agreed with Staff. Customers may subscribe to services from more than one company. The annual reminder affords customers the opportunity to revise their CPNI election if they choose.

Resolution: No change was necessary.

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

None

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

The Commission incorporates United States Code of Federal Regulations, Title 47, subparts 64.2001 through 2009 inclusive (revised September 20, 2002, and no future amendments) in subsection R14-2-2101. In accordance with A.R.S. § 41-1028, an agency may incorporate code regulations without publishing the incorporated matter in full as it would be unduly cumbersome, expensive, or otherwise inexpedient.

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

ARTICLE 21. CUSTOMER PROPRIETARY NETWORK INFORMATION

Section

- R14-2-2101. Application of the Rule
R14-2-2102. Definitions
R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services
R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services
R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice
R14-2-2106. Additional Informational Requirements for Customer Opt-Out Notice
R14-2-2107. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact
R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI
R14-2-2109. Confirming a Customer's Opt-In Approval
R14-2-2110. Reminders to Customers of Their Current CPNI Release Election
R14-2-2111. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI
R14-2-2112. Severability

ARTICLE 21. CUSTOMER PROPRIETARY NETWORK INFORMATION

R14-2-2101. Application of the Rule

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications carriers that provide telecommunications service in Arizona. In addition, the Commission adopts, incorporates, and approves as its own 47 CFR 64.2001 through 2009, revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975. These rules are in addition to the FCC rules and together with the FCC rules govern the release of CPNI in Arizona.

R14-2-2102. Definitions

For purposes of this Article, the following definitions apply unless the context otherwise requires:

1. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
2. "Communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.
3. A "Customer" of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.
4. "Customer premise equipment" means equipment employed on the premises of a person (other than a telecommunications carrier) to originate, route, or terminate telecommunications.
5. "Customer proprietary network information (CPNI)" means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. See 47 U.S.C. 222(h)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
6. "Non-listed Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory but are available through directory assistance.
7. "Non-published Service" means a service that ensures that customers' telephone numbers are not published in the

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- telephone directory and are not otherwise available through directory assistance.
8. "Opt-In approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI that requires that the telecommunications carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided notification of the carrier's request in conformance with Section R14-2-2105.
 9. "Opt-Out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI where a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to affirmatively object to approval within the 30-day waiting period provided in R14-2-2103(C) after the customer is provided the notice as required in R14-2-2106, subject to the requirements of Section R14-2-2108.
 10. "Published" means authorized for voluntary disclosure by the individual identified in the listing.
 11. "Subscriber list information" means any information identifying the listed names of subscribers of a telecommunications carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. See 47 U.S.C. 222(e)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
 12. "Telecommunications carrier" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
 13. "Third Party" means a person who is not the customer, the customer's telecommunications service provider, an affiliate, joint venture partner, or independent contractor of the customer's telecommunications service provider.

R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services

- A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:
 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already subscribe, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;
 2. Permit such persons or entities to obtain access to such CPNI for such purposes.
- B. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-2105 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-2106 of these rules.
- C. Telecommunications carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose or permit access to CPNI. A telecommunications carrier may, in its discretion, provide for a longer period.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet the minimum requirements set forth in 47 CFR 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services

- A. A telecommunications carrier may, subject to opt-in approval, use, disclose, or permit access to its customer's individually identifiable CPNI to affiliates that do not provide telecommunications-related services.
- B. A telecommunications carrier may use, disclose, or permit access to its customer's individually identifiable CPNI to a third party only upon written, electronic, or oral request by the customer that specifically identifies the third party to whom the CPNI may be disseminated.
- C. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-2105 of these rules.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement

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must meet the minimum requirements set forth in 47 CFR 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

- E. A telecommunications company relying on "Opt-In" approval must bear the burden of demonstrating that such approval has been given in compliance with sections R14-2-2104 and R14-2-2105 of these rules.
- F. This Article does not prohibit the use and disclosure of CPNI for the purpose of sharing customer records necessary for the provisioning of service by a competitive carrier as provided in section 222(c)(1) of the Communications Act of 1934, as amended (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice

- A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:
 - 1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 U.S.C. 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;
 - 2. State that the customer has a right to direct the company not to use the customer's CPNI or limit the use, disclosure, and access to the customer's CPNI;
 - 3. State that the telecommunications company has a duty to comply with the customer's limitations on use, disclosure of, and access to the information;
 - 4. State that CPNI includes all information related to specific calls initiated or received by a customer;
 - 5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use;
 - 6. Inform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes;
 - 7. State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
 - 8. Be posted on the company's web site.
- B. Written notice must:
 - 1. Be mailed separately or be included as an insert in a regular monthly bill within an envelope that clearly and boldly states that important privacy information is contained therein;
 - 2. Be clearly legible, in twelve-point or larger print;
 - 3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.
- C. Electronic notice must:
 - 1. Be e-mailed separately from any billing information, inducements, advertising, or promotional information;
 - 2. Be clearly legible, in twelve-point or larger print;
 - 3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.

R14-2-2106. Additional Information Requirements for Customer Opt-Out Notice

- A. A telecommunications carrier may provide notification to obtain opt-out approval through, written, or electronic methods, but not orally (except as provided in Section R14-2-2107).
- B. The contents of any such notification must comply with Section R14-2-2105 and with the following requirements.
- C. Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-2103(C)) for a response before opt-out approval is assumed.

R14-2-2107. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact

A telecommunications carrier may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications carriers use opt-out or opt-in approval based on the nature of the contact.

R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI

- A. Verification of a customer's opt-out approval must be obtained within one year. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below. Carriers may request an extension of the verification time period subject to Commission approval.
- B. Verification of the customer's approval may be obtained through written, oral, or electronic methods. All verification methods shall be conducted in the same languages that were used in the initial notification and shall elicit at a minimum:

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1. The identity of the customer;
 2. Confirmation that the person responding to the verification request is authorized to make CPNI available to the telecommunications company;
 3. Confirmation that the customer wants to make the CPNI release verification;
 4. The telephone numbers for which CPNI information release is authorized; and
 5. The types of service involved.
- C.** Written verification obtained by a telecommunications carrier shall:
1. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this Article;
 2. Be signed and dated by the customer authorizing the use of the customer's CPNI; and
 3. Not be combined with any inducement.
- D.** Electronic verification obtained by a telecommunications carrier shall:
1. Include electronically signed letters of authority;
 2. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this Article; and
 3. Not be combined with any inducement.
- E.** Oral verification obtained by a telecommunications carrier shall:
1. Be recorded; and
 2. Not be combined with any inducement.
- F.** If a telecommunications company fails to obtain verification within one year of obtaining a customer's opt-out approval, the authorization to use, disclose, or permit access to that customer's CPNI is no longer valid. If verification from the customer is not received within one year as required, the company shall direct any entities (affiliates, joint-venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI.
- G.** As a result of failure to obtain verification within one year, the company and any other entities (affiliates, joint-venture partners, or independent contractors) may not use, disclose, or permit access to that customer's CPNI until verification is obtained.
- H.** Carriers may request an extension of the verification time period subject to Commission approval.
- I.** The Commission may grant an extension(s) of time to complete the verification process if the applicant demonstrates items 1 through 4 below:
1. The applicant has used its best efforts to obtain customer verification of their CPNI sharing preference. One means of demonstrating this would be for the applicant to show that it has achieved verification with respect to a minimum of one-third of its customers during the initial or extension period for which the company used the opt-out approval mechanism; and
 2. The applicant has contacted each of its customers (for whom it has used an opt-out approval mechanism) at least once in the first half of the verification period and at least once during the second half of the verification period (if it was unsuccessful in obtaining the customer's verification during its initial contact) to verify the customer's CPNI sharing preference; and
 3. To the extent practicable, one of the applicant's contacts to the customer should be by phone to the customer's primary residence or telephone number by a person speaking the customer's language preference (English or Spanish). If the customer is not there, it should allow, if technically feasible, the customer the option of responding via message return; and
 4. The applicant presents a plan for achieving verification for its remaining customers. In its plan, the applicant must demonstrate that the additional time it is requesting is no longer than is reasonably necessary to complete items 1 and 3 again for any customers it was unsuccessful in contacting during the initial verification period, and to complete any additional measures designed to ensure customer contact during the extension period.

R14-2-2109. Confirming a Customer's Opt-In Approval

- A.** Each time a telecommunications company receives a customer's "Opt-In" approval to allow the telecommunications company to make CPNI available to itself, its affiliates, independent contractors or joint venture partners, the telecommunications company must confirm in writing the change in approval status to the customer within ten days.
- B.** The written confirmation must be mailed or e-mailed to the customer.
- C.** The confirmation must be separate from any other mail from the telecommunications company.
- D.** The confirmation must clearly advise the customer of the effect of the customer's opt-in choice and must provide a reasonable method to notify the telecommunications company, including a toll free telephone number if the telecommunications company made an error in changing the customer's approval status.

R14-2-2110. Reminders to Customers of Their Current CPNI Release Election

- A.** Telecommunications companies that have obtained opt-out or opt-in approval must notify customers of their current election regarding the treatment of their CPNI every twelve months.
1. In the case of opt-out approval, the notification must remind customers of their election to allow the company to:

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- a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe; and
 - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services.
 2. In the case of opt-in approval, the notification must remind customers of their election to allow the company to:
 - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
 - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services; and
 - c. Provide their information to its affiliates that provide non-communications-related services.
 3. In the case of customer specified third party approval by written, oral, or electronic request, the notification must remind customers of their election to allow the company to:
 - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
 - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services;
 - c. Provide their information to its affiliates that provide non-communications-related services; and
 - d. Provide their information to specifically identified third parties as requested in writing by the customer.
- B.** The notice must not be mailed with any advertising or promotional information.
- C.** The notice shall not be included with the customer's bill.

R14-2-2111. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI

Any approval of the use of CPNI received by a telecommunications carrier will remain in effect until the customer revokes, modifies, or limits such approval.

14-2-2112. Severability

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

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

[R06-150]

PREAMBLE

1. **Sections Affected**

R17-5-202	Amend
R17-5-203	Amend
2. **The statutory 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 and 28-5235
3. **The effective date of the rules:**

May 2, 2006

The Division is requesting an immediate effective date upon filing with the Secretary of State as allowed under A.R.S. § 41-1032(A). An immediate effective date is permitted because the rule provides a benefit to the public by allowing the Division to enforce the most recent version of federal law applicable to safety of motor carriers that operate on Arizona roads. No penalty is associated with a violation of the rule.
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 191, January 20, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 170, January 20, 2006

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

Name: Troy A. Walters, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 530M
1801 W. Jefferson St.
Phoenix, AZ 85007
Telephone: (602) 712-8994
Fax: (602) 712-3081
E-mail: twalters@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/rules.asp.

6. An explanation of the rule, including the agency's reason for initiating the rule:

MVD engages in this rulemaking to incorporate sections of the 2005 edition of the 49 CFR by reference into Arizona Motor Carrier Safety administrative rules. The rule also changes the definition of Commercial Motor Vehicle: the design capacity for vehicles transporting passengers for hire is changing from seven to eight. This rulemaking does not arise from a Five-Year Rule Review but is an annual update.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, 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 any study for this rulemaking.

8. 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

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

The economic impact of this rulemaking is negligible. This rulemaking does not make any substantial changes to the rules. The change in the definition of Commercial Motor Vehicle has no economic impact.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor technical and grammatical changes were made for clarity. Additionally, R17-5-209, Hazardous Materials Transportation, was removed from this rule package due to recent amendments to the CFR. These amendments will be completed in a separate rulemaking action.

11. A summary of the comments made regarding the rule and the agency response to them:

None

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

Not applicable

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

In R17-5-202(A):
49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2005

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 2. MOTOR CARRIERS

Section

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

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

ARTICLE 2. MOTOR CARRIERS

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

A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published ~~October 1, 2003~~ October 1, 2005, and no later amendments or editions, as amended by R17-5-202 through R17-5-208. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.

B. The ~~regulations Sections~~ of 49 CFR, ~~that are~~ incorporated ~~by~~ in subsection (A); apply as amended by R17-5-203 through R17-5-208 to:

1. A motor carrier as defined in A.R.S. § 28-5201 except, a motor carrier transporting passengers for hire in a motor vehicle with a design capacity of ~~six~~ seven or fewer persons.
2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed by the federal regulations incorporated in R17-5-209.

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 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 by the federal regulations incorporated in 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 in 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 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.
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;
 - b. Transports passengers for hire and has a design capacity of ~~seven~~ 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. ~~Transports a hazardous material in an amount requiring marking or placarding as prescribed in R17-5-209;~~

- ~~dc.~~ Is not an intrastate-operating tow truck that has a GVWR ~~up to~~ 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; and ~~ed.~~ 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 ~~R17-5-206~~ R17-5-208.
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 ~~R17-5-206~~ R17-5-208 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 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 49 CFR 390.5, has the meaning prescribed under A.A.C. R13-3-101.
- 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 390.21, Marking of CMVs. Paragraph (a) is amended to read:
This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to U.S. Department of Transportation marking requirements shall mark its vehicle with the:
1. Company name, or
 2. Business trade name, and
 3. City and state.
- E. 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.
 2. Paragraphs (a)(1), including (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.
 3. Paragraph (a)(2)(i)(A) is amended as follows:
 - 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 delineated in R17-5-210.
 4. Paragraph (a)(2)(i)(B) is amended as follows:
The Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines 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.
- F. 49 CFR 390.25, Extension 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 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.
- G. 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 (602) 223-2212.