

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 the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and 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 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

[R07-124]

PREAMBLE

1. **Register citation and date for the original Notice of Proposed Rulemaking:**
Notice of Proposed Rulemaking: 2 A.A.R. 4789, December 29, 2006
2. **Sections Affected:** **Rulemaking Action:**
R17-5-203 Amend
3. **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
4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Janette M. Quiroz
Address: Administrative Rules Unit
Arizona Department of Transportation,
Motor Vehicle Division, Mail Drop 530M
1801 W. Jefferson
Phoenix, AZ 85007
Telephone: (602) 712-8996
Fax: (602) 712-3373
E-mail: jmquiroz@azdot.gov
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/rules.asp>
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
In conjunction with the Arizona Department of Public Safety, the Division proposes to amend R17-5-203 to require Commercial Motor Vehicles (CMVs) identified under R17-5-203(B)(3) to obtain a an identification number from the Federal Motor Carrier Safety Administration registry for intrastate travel within Arizona. This amendment is proposed as an effort to facilitate tracking and identification of those CMVs with a poor safety rating.
6. **An explanation of the substantial change which resulted in this supplemental notice:**
Amendments were made to R17-5-203 at 12 A.A.R. 1559, May 12, 2006. This rulemaking did not incorporate those amendments. Additionally, the amendment to the CFR subsection under R17-5-203(D) should have included the entire subsection being amended, to include report and permit filing dates
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:**

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The rule amendment under R17-5-203(D) is anticipated to promote highway safety in Arizona. The amendment requires that a USDOT number be obtained for a CMVs for intrastate vehicles which will facilitate tracking and identification of those CMVs with a poor safety rating.

Affected entities are CMVs, state and local law enforcement agencies that inspect commercial vehicles, and motorists sharing the roads with CMVs.

Law enforcement will benefit by being able to focus audits and inspection activities on problem carriers and the motoring public will benefit by reducing unsafe trucks and buses on the roadway.

There is no cost to the state or the commercial vehicle industry associated with registration and the cost of displaying the identification number on the vehicle is minimal. No fee is charged for obtaining the federal identification number, which is available on the Internet or through the U.S. mail. The only cost to the CMV operator would be for lettering to display the federal identification number.

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: Janette M. Quiroz
Address: Administrative Rules Unit
Arizona Department of Transportation,
Motor Vehicle Division, Mail Drop 530M
1801 W. Jefferson
Phoenix, AZ 85007
Telephone: (602) 712-8996
Fax: (602) 712-3373
E-mail: jmquiroz@azdot.gov

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10. The time, place, and nature of the proceedings for the making, 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:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit written, faxed, or e-mail comments, please contact the rules analyst listed in #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record in this rulemaking will close on May 21, 2007.

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:

None

13. The full text of the changes follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 2. MOTOR CARRIERS

Section

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

R17-5-203. 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

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material in an amount requiring the vehicle to be marked or placarded as prescribed 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 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;
 - c. Is not an intrastate-operating tow truck that has a GVWR of 26,000 pounds or less, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49; and
 - d. Operates for purposes of interstate commerce with a GVWR of greater than 10,000 pounds.
4. “Exempt intracity zone” is deleted and has no application in R17-5-203 through R17-5-208.
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 R17-5-208 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.~~

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

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

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

<u>USDOT Number ending in</u>	<u>Must file by last day of:</u>
<u>1</u>	<u>January</u>
<u>2</u>	<u>February</u>
<u>3</u>	<u>March</u>

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<u>4</u>	<u>April</u>
<u>5</u>	<u>May</u>
<u>6</u>	<u>June</u>
<u>7</u>	<u>July</u>
<u>8</u>	<u>August</u>
<u>9</u>	<u>September</u>
<u>0</u>	<u>October</u>

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

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

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

~~E.~~F. 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), (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.~~G. 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.~~H. 49 CFR 390.27 Locations of motor carrier safety service centers is amended to read:

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