

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 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSING

[R05-58]

PREAMBLE

- | | |
|---|--|
| 1. <u>Sections Affected</u>
R9-10-108 | <u>Rulemaking Action</u>
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. § 36-136(F)
Implementing statute: A.R.S. § 36-405
- 3. The effective date of the rules:**
April 2, 2005
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 3838, published September 17, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 4320, published October 29, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|---------------|--|
| Name: | Kathleen Phillips, Rules Administrator |
| Address: | Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007 |
| Phone number: | (602) 542-1264 |
| Fax number: | (602) 364-1150 |
| E-mail: | phillik@azdhs.gov |
| | or |
| Name: | Mary Wiley, Assistant Director |
| Address: | Department of Health Services
Division of Licensing Services
150 N. 18th Ave.
Phoenix, AZ 85007 |
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| Fax number: | (602) 364-4808 |
| E-mail: | wileym@azdhs.gov |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
A.A.C. R9-10-108, establishing licensing time-frames for health care institution licenses, became effective on August 1, 2002. At the same time 9 A.A.C. 10, Article 1 was revised to include requirements for approvals of architectural plans and specifications, initial and renewal license applications, and a change to a health care institution license and to establish enforcement criteria.

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The Department has an entire year of data pertaining to the implementation of the licensing time-frames in R9-10-108 and has determined that 90 calendar days for the Department to conduct a substantive review of a renewal health care institution license application is not sufficient. The complexity of the substantive review, the prioritization of program functions, the sheer volume of renewal health care institution license applications processed by the Department, budgetary constraints, staff turnover and subsequent training time necessary for new staff, and limited resources all contribute to the insufficiency of the licensing time-frame.

During the substantive review the Department conducts an onsite inspection of a functioning health care institution and prepares a statement of deficiencies. These actions can take the Department from half a day to several weeks, dependent on the size of the facility, type of services provided by the facility, availability of facility records, location of the facility, and the level of facility's non-compliance. It is impossible to accurately estimate the time an inspection and subsequent follow-up may take until the inspection is conducted.

In addition, the Department's first priority for inspections is to respond to complaints that allege a threat to the health and safety of a health care institution's patients. Complaint investigations are difficult to predict in terms of the number of complaints received in a given period of time, complexity of the allegations, and amount of time to inspect and conduct any follow-up including enforcement actions necessary to protect the health and safety of health care institution patients. For example, a licensing surveyor could have an unannounced renewal inspection scheduled in Phoenix when a complaint alleging life-threatening practices is received on a health care institution in Kingman. The licensing surveyor would go to Kingman, do the complaint investigation and any follow-up including, if necessary, enforcement action. During this time, the renewal license inspection is not being completed and the time is being counted against the Department's licensing time-frame.

The Department's second priority is completing the licensing process for an initial health care institution so that the facility can begin operating. Although a health care institution cannot operate until the Department issues a health care institution license to the facility, a licensed health care institution can continue to operate until the Department makes a determination to deny or limit the license if, pursuant to A.R.S. § 41-1064, the facility has submitted a timely and sufficient license renewal application. The Department has determined that completing the initial license process so that a health care institution can begin operating is a higher priority than completing the renewal license process for a health care institution that is already operating and can continue to operate until the Department issues a license denial or limitation on the license.

The Department is also dealing with finite resources. In the example mentioned above, there frequently are no other licensing surveyors available to either investigate the complaint or inspect the licensed health care institutions. In addition, staff turnover has had a serious impact on the Department's ability to accomplish licensing functions. Hiring and training new licensing surveyors directly affects the number of inspections and investigations that can be completed. In order to be effective, training has to include legal issues, inspection and investigative techniques, program-specific requirements, and policies and procedures for licensing. A new licensing surveyor may take up to one year to complete the necessary training to be proficient in conducting onsite inspections, complaint investigations, and enforcement actions.

The Department received 591 initial health care institution license applications, 1450 renewal health care institution license applications, and 1951 complaints alleging rule violations in health care institutions in the fiscal year ended June 30, 2004. There were 33 initial licenses issued outside of the licensing time-frame in one licensing program. A total of 591 renewal applications, from the three health care institution licensing programs, were acted on outside the licensing time-frames. Based on the factors previously stated, the Department is planning to extend the substantive review time-frame for a renewal health care institution license application from 90 days to 150 days.

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

The Department did not review any studies.

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:

Cost bearers

Increasing renewal licensing time-frames should not result in increased costs for licensed health care institutions. A licensed health care institution is required to submit the application and license fees with the renewal application. The licensed health care institution continues to operate until the Department issues a license denial or limitations on the license. The Department processes the license application and issues a renewal license or denies the renewal application. During fiscal year 2003-2004, the Department issued 1450 health care institution renewal licenses. Of those 1450 renewal licenses, the Department did not meet the licensing time-frames in R9-10-108 for 349 renewal applications and returned \$114,280 in application and licensing fees to licensed health care institutions. Increasing

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the renewal licensing time-frame will allow the Department to comply with the renewal licensing time-frame requirements and minimize the number of application and licensing fees returned to licensed health care institutions.

Although the Department may return a licensed health care institution's application and licensing fees because the Department did not comply with the licensing time-frames, the licensed health care institution currently bears the cost of submitting application and licensing fees with a renewal health care institution licensing application and the rule does not impose any additional costs.

Beneficiaries

As a result of the rule, the Department expects to collect, retain, and deposit in the general fund approximately \$100,000 more in application and licensing fees on an annual basis. In the fiscal year ending June 30, 2004, the Department returned or did not collect \$114,280 in health care institution renewal application and licensing fees. The rule will extend the licensing time-frame and allow the Department to complete the licensing process within the stated licensing time-frame and retain the application and licensing fees to deposit in the state general fund.

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

There were no changes.

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

There were no comments made.

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 rule:

Not applicable

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

No

15. The full text of the rule follow:

TITLE 9. HEALTH SERVICES

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING**

ARTICLE 1. GENERAL

Section

R9-10-108. Time-frames

ARTICLE 1. GENERAL

R9-10-108. Time-frames

- A.** No change
- B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C.** No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change

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- c. No change
- 6. No change
- 7. No change

Table 1

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval of architectural plans and specifications R9-10-104	A.R.S. §§ 36-405, 36-406(1)(b) and 36-421	105 days	45 days	60 days
Health care institution initial license R9-10-105	A.R.S. §§ 36-405, 36-407, 36-421, 36-422, 36-424, and 36-425	120 days	30 days	90 days
Health care institution renewal license R9-10-107	A.R.S. §§ 36-405, 36-407, 36-422, 36-424, and 36-425	120 180 days	30 days	90 150 days
Approval of a change to a health care institution license R9-10-109(E)	A.R.S. §§ 36-405, 36-407, and 36-422	75 days	15 days	60 days

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TITLE 17. TRANSPORTATION

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

[R05-61]

PREAMBLE

- 1. Sections Affected:**
R17-5-203
R17-5-210

Rulemaking Action:
Amend
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. §§ 28-5201, 28-5204, 28-5234, and 28-5235
- 3. The effective date of the rules:**
February 1, 2005

The Department 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 needed because the rule provides a benefit to the public and no penalty is associated with the violation of the rule. A company rendering utility service in an emergency is required to contact and coordinate with state or local officials before exceeding federal hours-of-service rules. This rulemaking clarifies the manner in which this contacting and coordinating is to occur.

This rulemaking is a joint effort between ADOT, DPS, and the utility industry in Arizona. It does not arise from a five-year review.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 2892, July 16, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 2874, July 16, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Troy A. Walters, Rules Analyst

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

The rules in this package clarify notification requirements for a utility in an emergency. A.R.S. § 28-5234(B) provides for a public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad to identify an emergency situation that jeopardizes life or property or endangers public health or safety. In an emergency, a utility may exceed federal hours-of-service requirements if the utility contacts and coordinates with local or state officials. The utility industry in Arizona has requested guidance in implementing this provision. This rulemaking provides the guidance requested. This is a joint effort between ADOT, DPS, and the utility industry in Arizona.

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

None

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

Not applicable

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

The economic impact of the rulemaking is negligible for the Department. There will be some costs to DPS to administer this provision and create a form for reporting an emergency situation by the public service industry. These costs are de minimus. Oversight of this issue is part of the enforcement of motor carrier issues already performed by DPS.

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

In the proposed rulemaking, the Department included an exemption from the federal hours-of-service regulations for all utilities. The Department did not have authority to provide this exemption and deleted it from the final rulemaking. Additionally, the proposed rulemaking removed the term "for hire" from the definition at R17-5-203(B)(3)(b). The removal of this term would make the definition inconsistent with federal law. It was not the intent of the Department to be inconsistent with federal law and the Department realizes the lack of authority to remove this term, and kept "for hire" in the final rulemaking. These are not substantial changes because a person who would have been affected by the proposed rulemaking could not have relied on the Department proposing a rule for which it had no authority. Additionally, minor grammatical, sentence structure, and syntactical changes were made upon recommendation by the Governor's Regulatory Review Council staff.

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

An oral hearing was held on Wednesday, August 25, 2004 at the Executive Hearing Office in Phoenix. Twelve people attended and four made comments. There was a question regarding deleting "for Hire" from the definition of commercial motor vehicle (R17-5-203(B)(3)(b)). The commenter was concerned that deleting the words "for hire" would make the definition inconsistent with the federal definition at 49 CFR 390.5 and would cause vans purchased to encourage employee vanpooling to be classified as commercial motor vehicles. As indicated in item #10, the Department determined that the commenter was correct and reinserted the words "for hire" into the definition of commercial motor vehicle.

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:

None

14. Was this rule previously adopted as emergency rules?

No

15. The full text of the rules follows:

Notices of Final Rulemaking

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
- R17-5-210. ~~Repealed~~ Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

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 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 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 or more persons; or
 - c. Transports a hazardous material in an amount requiring marking or placarding as prescribed in R17-5-209;
 - d. Is not an intrastate-operating tow truck that has a GVWR up to 26,000 pounds, 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
 - e. Operates for purposes of interstate commerce with a GVWR of greater than ~~40,001~~10,000 pounds.
 4. "Exempt intracity zone" is deleted and has no application in R17-5-203 through R17-5-206.
 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 and the term "motor carrier" is substituted.
 6. "Gross vehicle weight rating (GVWR)" is amended by adding:
~~In the absence of a value specified by the manufacturer and the vehicle identification number, law enforcement shall use a vehicle's actual gross weight or declared gross weight to determine the GVWR.~~
 76. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
 87. "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.
 98. "State" means a state of the United States or the District of Columbia.
 109. "Tow truck," as used in the definition of emergency in 49 CFR 390.5, has the meaning prescribed under A.A.C. R13-

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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), (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; ~~and 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-~~2522~~ 2212.

R17-5-210. ~~Repealed~~ Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

- A.** A public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad shall notify the Commercial Vehicle Enforcement Bureau, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:
 - 1. Date of the emergency situation.
 - 2. Time that the emergency situation started.
 - 3. Description of the emergency situation.
 - 4. Location of the emergency situation.
 - 5. Projected duration of the emergency situation.
 - 6. Authorized party's signature for determining that an emergency situation exists.
 - 7. Name and contact number of responsible party in the field, and
 - 8. The utility's self-generated Emergency ID or tracking number.
- B.** A public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes;

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1. A list of drivers involved in the emergency situation.
 2. The duration of the emergency situation.
 3. The off-duty time provided for the affected drivers after the emergency situation concluded, and
 4. Any United States Department of Transportation recordable accidents, as defined in 49 CFR 390.15, that occurred during the emergency situation.
- C.** After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.