

## TITLE 17. TRANSPORTATION

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### TITLE 17. TRANSPORTATION

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*Editor's Note: 17 A.A.C. 5 was created from Sections recodified from 17 A.A.C. 4 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).*

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*Article 7, consisting of Sections R17-5-701 through R17-5-706, repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2).*

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#### **ARTICLE 1. GENERAL PROVISIONS**

#### **ARTICLE 2. MOTOR CARRIERS**

#### **R17-5-201. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

"Audit" means any inspection of a transporter's motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

"Co-applicant" means an employer or potential employer.

"Danger to public safety" means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

"Director" means the Director of the Arizona Department of Transportation or the Director's designated agent.

"Executive Hearing Office" means the Arizona Department of Transportation's Executive Hearing Office.

"Medical waiver evaluation summary" means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

"Physiatrist" means a doctor of medicine specialized in physical medicine and rehabilitation.

"Transporter" means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

"Violation" means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

"Vision examination report" means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver's, or driver applicant's, ability to safely perform the functional skills involved with driving a motor vehicle.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).  
Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability**

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2009, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.

B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona, except as provided under subsection (C).

C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

#### **Historical Note**

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3).  
Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General**

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

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 placarded as prescribed under R17-5-209.

B. 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:

"Commercial Motor Vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-5201.

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

"State" means a state of the United States or the District of Columbia.

"Tow truck," as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

C. 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

D. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

#### **Historical Note**

New Section recodified from R17-4-435.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3).  
Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1).  
Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 2636, effective July 10, 2007 (Supp. 07-3).  
Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors**

A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation; or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209.

B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended by adding:  
"; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208."

#### Historical Note

New Section recodified from R17-4-435.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### R17-5-205. Repealed

#### Historical Note

New Section recodified from R17-4-435.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

#### Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

#### Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

#### R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs or Monocular Vision; Federal Diabetes Exemption Program

A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), or (b)(10), may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director.

B. A person eligible to apply for an intrastate medical waiver under subsection (A) shall:

1. Meet all other requirements under 49 CFR 391.49(c), Alternative Physical Qualification Standards for the Loss or Impairment of Limbs; and
2. Apply to the Department as prescribed under subsection (C).

C. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:

1. Identify the applicant:
    - a. Name and complete address of the driver applicant;
    - b. Name and complete address of the motor carrier co-applicant;
    - c. U.S. Department of Transportation motor carrier identification number, if known; and
    - d. A description of the driver applicant's limb or visual impairment as applicable to the type of waiver being requested;
  2. Describe the type of operation the driver applicant will be employed to perform, if the information is known:
    - a. Average period of time the driver will be driving or on duty, per day;
    - b. Type of commodities or cargo to be transported;
    - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
    - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
  3. Describe the commercial motor vehicles the driver applicant intends to drive:
    - a. Truck, truck tractor, or bus make, model, and year (if known);
    - b. Drive train:
      - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
      - ii. Auxiliary transmission (if any) and number of forward speeds; and
      - iii. Rear axle (designate single speed, two-speed, or three-speed);
    - c. Type of brake system;
    - d. Steering, manual or power assisted;
    - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
    - f. Number of semitrailers or full trailers to be towed at one time;
    - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
    - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
  4. Include a certification statement:
    - a. The co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391; or
    - b. In the case of a unilateral application, the driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391; and
  5. Document the signature and date signed:
    - a. The driver applicant's signature in the case of a unilateral application; or
    - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (2) shall be accompanied by:
1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
  2. A medical waiver evaluation summary completed by either a board qualified or board certified psychiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the psychiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
    - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
      - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
      - ii. A statement by a board qualified or board certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately when the intrastate medical waiver is requested due to a loss or impairment of limbs;
    - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
      - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
      - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
      - iii. A statement by a board qualified or board certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
  3. A description of the driver applicant's prosthetic or orthotic device worn, if any;
  4. A skill performance evaluation performed by a federally certified state commercial driver license examiner;
  5. Application for employment:
    - a. A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or
    - b. A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect; and
  6. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
  2. A current vision examination report, which an ophthalmologist or a licensed optometrist:
    - a. Completes on a form provided by the Department;

- b. Uses to indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and yellow, as applicable to the type of medical waiver being requested; and
  - c. Mails to the Department at the address provided on the form;
  - 3. A skill performance evaluation administered by a federally certified state commercial driver license examiner at a commercial driver license facility of the Department;
  - 4. Application for employment:
    - a. A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or
    - b. A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect;
  - 5. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
  - 6. A certification statement by the driver applicant indicating that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
- 1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
  - 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, or withdrawals involving the subject driver;
  - 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
  - 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
  - 5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H. The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I. After successful completion of a skill performance evaluation, if the Director grants an intrastate medical waiver under subsection (A), the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- J. The intrastate medical waiver granted by the Director under subsection (A) shall identify:
- 1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
  - 2. The trailer type used in the skill performance evaluation, without limiting the waiver to that specific trailer type.
- K. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
- 1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
  - 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- L. The intrastate medical waiver granted by the Director under subsection (A) shall be:
- 1. Valid for a period of not more than two years from the date of issuance;
  - 2. Renewable 30 days prior to the expiration date; and
  - 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer's name and the type of equipment to be driven.
- M. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
- 1. Passengers for hire, and
  - 2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- N. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- O. The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- P. A driver applicant, or a driver applicant jointly with a motor carrier co-applicant whose principal place of business is located in Arizona, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, an intrastate medical waiver renewal application. The intrastate medical waiver renewal application shall contain the following:
- 1. Name and complete address of the motor carrier currently employing the applicant;
  - 2. Name and complete address of the subject driver;
  - 3. Total miles driven under the current intrastate medical waiver;
  - 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
  - 5. A current medical examination report;
  - 6. A medical waiver evaluation summary, as prescribed under subsection (D)(2), if an unstable medical condition exists;
  - 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
  - 8. Notification of any change in the type of tractor the driver will operate;
  - 9. Subject driver's signature and date signed; and
  - 10. Motor carrier co-applicant's signature and date signed (if applicable).
- Q. Falsifying information on an intrastate medical waiver application or an intrastate medical waiver renewal application or other information required by this Section of either an applicant or a co-applicant motor carrier is prohibited.
- R. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- S. The Director may revoke an intrastate medical waiver after providing, to the person to whom it was issued, written notice of the proposed revocation and a reasonable opportunity to request a hearing.
- T. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

#### Historical Note

New Section recodified from R17-4-435.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability**

##### A. Incorporation of federal regulations.

- 1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2009, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
  - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
  - b. Subchapter C - Hazardous Materials Regulations; Parts:
    - i. 171 - General information, regulations, and definitions;
    - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
    - iii. 173 - Shippers - general requirements for shipments and packagings;
    - iv. 177 - Carriage by public highway;
    - v. 178 - Specifications for packagings; and
    - vi. 180 - Continuing qualification and maintenance of packagings.
- 2. The material incorporated by reference under this subsection is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.

##### B. Application and exceptions.

- 1. Application.
  - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
  - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
- 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.

##### C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171. General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:

"Carrier" means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."

"Hazmat employer" means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities."

"Highway" means a public highway defined under A.R.S. § 28-5201."

"Person" has the same meaning as defined under A.R.S. § 28-5201."

2. Part 172. Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3 Applicability. Paragraph (a)(2) is amended to read: "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."

3. Part 177. Carriage by public highway.

a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training.

In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."

b. Section 177.802, Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231."

#### Historical Note

New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-210. 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, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, 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, a political subdivision of this state that is engaged in rendering public utility service, or a 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:

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 under 49 CFR 390.5, which 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.

#### Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction**

A. Scope. This Section applies to any transporter subject to:

1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.

B. Audits.

1. The Department may conduct an audit for cause or without cause.
2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
3. The Department may inspect a motor vehicle:
  - a. Within Arizona at:
    - i. A transporter's place of business, or
    - ii. Any other in-state location, or
  - b. Outside Arizona at a transporter's place of business.
4. A transporter shall make records available for audit:
  - a. During the transporter's normal business hours, and
  - b. In a specific location as follows:
    - i. The transporter's Arizona place of business, or
    - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.

C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.

D. Obligation to remedy violations: After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:

1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14

E. Noncompliance: Failure to remedy violations. If the Department determines a transporter did not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.

F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

#### Historical Note

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-212. Motor Carrier Safety: Hearing Procedure**

A. Scope.

1. This Section applies only to a motor carrier enforcement action under:
  - a. R17-5-201 through R17-5-209; and
  - b. A.R.S. Title 28, Chapter 14.
2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I).

B. Initiation of proceedings, pleadings.

1. The Director shall initiate a hearing under this Section by:
  - a. Signing and serving a complaint in the form prescribed under subsection (G) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
  - b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed.
2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director's behalf through completion of an administrative proceeding under this Section.

C. Order to show cause.

1. When a complaint is served, the Executive Hearing Office shall immediately issue a summons for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office should not grant the requested relief.
  2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served.
  3. The parties may resolve a complaint before the hearing date.
    - a. The respondent shall file any settlement condition with the Executive Hearing Office.
    - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.
- D. Service.
1. The Executive Hearing Office shall:
    - a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
    - b. Maintain a proof-of-service file.
  2. The date of service is the date of mailing.
- E. Answer.
1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
    - a. Filing a written answer with the Executive Hearing Office; and
    - b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.
  2. A respondent's written answer shall contain:
    - a. An admission or denial of each complaint allegation, and
    - b. A list of all defenses that the respondent intends to raise during the hearing.
  3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.
- F. Default.
1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.
  2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
    - a. Consider the respondent's default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and
    - b. Enter an order granting the relief requested in the Department's complaint.
  3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.
- G. Emergency motor carrier hearings; scope.
1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
    - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
    - b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
  2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
  3. The complaint and order to show cause shall contain the following:
    - a. The Department as the designated petitioner on the state's behalf;
    - b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
    - c. The relief sought by the Department; and
    - d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
  4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
    - a. Was operating on a public highway and the operation created a danger to the public safety,
    - b. Was responsible for the danger, and
    - c. Is responsible for preventing or remedying further danger to public safety.
  5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.
  6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).
- H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.
- I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.

#### Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

### ARTICLE 3. PROFESSIONAL DRIVER TRAINING SCHOOLS

#### R17-5-301. Reserved

#### R17-5-302. Commercial driving schools and instruction licensing

A. Definitions. The following words and phrases have been defined as follows:

1. "Commission": The Arizona Highway Commission.
2. "Instructor": Any person, whether acting for himself as operator of a professional driver training school or for any such school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to operate or drive motor vehicles or preparing to take an examination for an operator or chauffeur's license or learner's permit; and any person who supervises the work of any other such instructor.
3. "Professional driver training school or school": A business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, to prepare an applicant for an examination given by the state for an operator's or chauffeur's license or learner's permit and charging a consideration or tuition for such services.
4. "Superintendent": The superintendent of the Motor Vehicle Division.
5. "Suspension": The licensee's privilege to operate a professional driving school or to instruct (as provided in these rules) is temporarily withdrawn.
6. "Revocation": The licensee's privilege to operate a professional driving school or to instruct (as provided in these rules) is terminated indefinitely.
7. "Operator": The owner of a professional driver training school or one who holds himself out as offering, or one who otherwise offers, for a consideration or tuition, any service or services enumerated in A.R.S. § 32-2351, subsection (3).
8. "Doing business": Soliciting for the purpose of offering, or performing any or all of the Acts set forth in A.R.S. § 32-2351(2) and (3).

B. General provisions:

1. Administration and enforcement. The Commission, through the Superintendent of Motor Vehicle Division, shall administer and enforce the provisions of this Chapter.
2. Schools and instruction subject to licensing and rules. Section 1, Title 32, Chapter 23 and these rules shall apply to driving schools of all kinds as defined in these rules and to all persons giving instruction in driving schools or giving instruction in the operation of motor vehicle as defined in "instructor."
3. Use of driver training vehicle. No operator of a driving school shall lease, rent, or by any other arrangement permit the use of a vehicle used in driver training by another person when said vehicle is being operated by a student.
4. Employment of Motor Vehicle Division or Traffic Safety employees. No school will be permitted to engage the service of an employee of the Motor Vehicle Division or Traffic Safety as an instructor, agent or employee.

C. Licenses:

1. Requirements for an original license to operate a professional driver training school and a license to give driving instructions.
  - a. In general two types of licenses will be issued. A license to operate a driving school and a license for an individual to give driving instruction as an employee of a school.
  - b. A license to operate a driving school shall include the right to give driving instruction only when the licensee is licensed as an instructor or employs a person who is licensed as an instructor in accordance with all the requirements of law.
  - c. A copy of the instructor's license must be displayed in the office of each school he may represent.
  - d. The license issued by the Division to operate a driving school shall be prominently displayed in the place of business of the driving school.
  - e. The instructor's identification card shall be in the possession of the licensee at all times that he instructs or actually accompanies a student. The instructor must surrender this card to the Division upon becoming inactive or when his license is cancelled, suspended or revoked.
  - f. A license certificate shall be issued to each driving school for each instructor employed by such school. This certificate shall be prominently displayed in the place of business along with the license to operate such school.
  - g. In case of loss or mutilation, duplicate license or instructor's identification card may be issued by the Division upon submission of a properly signed and completed application accompanied by the required fee and an affidavit setting forth the circumstances. The affidavit must show the date the license or identification card was lost, mutilated, or destroyed, and the circumstances involving the loss, mutilation, or destruction.
  - h. A license to operate a driving school and any instructor's license shall be nontransferable.
  - i. Each license will be effective on the date of issuance and will expire on the last day of the calendar year.
  - j. No license fee will be prorated in the event the license is issued less than 12 calendar months prior to expiration.
2. Application for original professional driving school license.
  - a. Before any license is issued an application shall be made in writing to the Division on a form prepared and furnished by the Division, which shall include the following:
    - i. The name of the school together with ownership and controlling officers thereof.

- ii. The application for a driving school license shall include the official name of the school and the location of its established place of business.
  - iii. The specified course of instruction which will be offered.
  - iv. The place or places where such instruction will be given.
  - v. The qualifications of the instructors and supervisors in each specific field together with their names, addresses and other information which may be required by the superintendent.
  - vi. Samples of any and all contracts to be used by the school.
  - vii. Sample copies of all forms of receipts to be used by the school.
  - viii. Copies of all forms used by the school which will be furnished or delivered to students.
  - ix. Driver training schools proposing to give instructions pertaining to the operation of motorcycles, buses, and trucks other than 1/2- or 3/4-ton pickups must submit their complete curriculum for approval along with their application.
  - b. Every application for a license to operate driver training school must be accompanied by a fee of \$200.00. An applicant doing business in more than one location must secure a license for each branch office. An application for a branch license must be accompanied by a fee of \$50.00.
  - c. All renewal application forms must be submitted to the Division not less than 30 days prior to the time the present school license expires. The Division will not be responsible for the timely issuance of any renewal license when application is not received at least 30 days prior to the expiration date.
  - d. Each driving school shall submit to the Division, upon application for a license or a renewal license, a complete list of all personnel in its organization and shall indicate those in the staff who will be instructing. When changes are made in instructor personnel, notification shall be made to the Division within 10 days thereafter.
  - e. An individual, association, partnership, or corporation may qualify for a license to operate a professional driver training school through himself, one of its partners, officer of the corporation or managing employee. The qualifying party shall be a regular and bona fide employee whose principal employment is with the employer for whom he has qualified and must have active and direct supervision and control of all operations necessary to secure full compliance with all the provisions of Arizona Revised Statutes Title 32, Chapter 23 and these rules.
3. Application for driving school instructor's license.
- a. Application for an instructor's license shall be made upon a form supplied by the Division, which form may require the following disclosures and information.
    - i. True full names
    - ii. Residence addresses
    - iii. Fingerprint card
    - iv. Employment histories
    - v. Personal references
    - vi. Such other information which the Division deems pertinent to determine the applicant's good moral character. No instructor's license shall be issued except upon compliance with all the provisions of these rules and the provisions of A.R.S. §§ 32-2351 through 32-2391.
  - b. The application for an instructor's license shall include the official name of the school at which the applicant will be an instructor. The licensed instructor shall notify the Division of his initial employment or of any change of employer within 10 days thereafter.
  - c. Every application for a license as a driving school instructor must be accompanied by a fee of \$10.00.
  - d. All renewal application forms must be submitted to the Division not less than 30 days prior to the time the previous license expires. The Division will not be responsible for the timely issuance of any renewal license when application is not received at least 30 days prior to expiration date.
- D. Requirements of applicants for driver training school license and driver training instructors. Every applicant for a license to operate a driving school and every applicant for a license to give instructions in driving motor vehicles shall meet the requirements as set forth below:
- a. Each applicant shall pass an examination given by the Division which may consist of an actual demonstration or a written test or both covering:
    - i. Traffic laws
    - ii. Safe driving practices
    - iii. Operation of motor vehicles
    - iv. Knowledge of teaching methods, techniques, and practices
    - v. Driving school statutes and regulations, business ethics, office procedures, elementary recordkeeping.
  - b. Each applicant must be of good moral character, at least 21 years of age and have the minimum of a high school education or the equivalent.
  - c. Each applicant must hold a valid Arizona driver license.
  - d. Each applicant must have a satisfactory driving record.
  - e. All instructors shall be physically and mentally able to safely operate a motor vehicle and to train others in the operation of motor vehicles. To substantiate this, the superintendent may require a properly signed and completed certificate of medical examination conducted by a person qualified and licensed to practice medicine in Arizona.
- E. Insurance and safety requirements:
1. All professional school operators shall maintain bodily injury and property damage liability insurance on motor vehicles while being used in driving instruction, insuring the liability of the driving school, the driving instructor, and any person taking instruction in at least the following amounts: \$10,000.00 for bodily injury to or death of any one person in any one accident and, subject to said limit for one person, \$20,000.00 for bodily injury to or death of two or more persons in any one accident, and the amount of \$5,000.00 for damage to property of others in any one accident.
  2. Evidence of such insurance coverage in the form of a certificate from the insurance carrier shall be filed by the school with the Division and the certificate shall stipulate that the insurance contract carried by the school provides for cancellation only upon 30 days prior written notice to the Division and shall further include the make, model, year and motor or serial number of every vehicle which will be used for instruction.
  3. When a vehicle is added to or exchanged in a driving school fleet covered under a fleet insurance plan, the licensee shall provide the Superintendent a copy of a policy rider issued by the insurance carrier showing the addition or exchange, with complete descriptions of the vehicles involved.
- F. Place of business:
1. The established place of business of each driver training school must be regularly occupied and primarily used by that driver training school for the business of giving driving instructions for hire and the business of preparing members of the public for the examination given by the Division for a motor vehicle operator's license.
  2. Each place of business shall be safe and meet all requirements of state law and local ordinances, and the superintendent may require applicants and licenses to provide proof of compliance with local zoning ordinances.
  3. Each school shall post its office hours in a conspicuous place and shall be open to the public during these hours. In the absence of the operator, the person left in charge of the office during the posted office hours shall be fully qualified and authorized to give pertinent information to the public concerning lessons and accounts, and to give information to any representative of the Division concerning the operation of the school.
  4. When a driving school office is located in an office building, store, or any other physical structure which is not a part of a dwelling, there shall be a clear separation between the driving school business and any other activity housed in the building.
  5. The school's license must be conspicuously displayed.
  6. All records pertaining to the operation of the school shall be maintained in the established place of business and available for inspection during normal business hours.
  7. Every place of business used by each driving school shall provide adequate facilities for any student being given instructions in other than behind-the-wheel driver training.
- G. Branch offices:
1. A driver training school desiring to open a branch office shall make application on a form prescribed by the Division and accompanied by the required fee of \$50.00. If application is approved, the Division will issue a copy of the license of the principal place of business, appropriately endorsed, for use in the branch office.
  2. This copy must be conspicuously displayed in such branch office at all times.
  3. A branch office may not be removed to a new location without prior approval of the Division.
  4. Should a branch office be discontinued, the branch office copy of the license must be surrendered immediately to the Division.
  5. The branch office must meet all of the requirements of the licensed principal place of business and must be equipped to, and shall perform, substantially the same services apply to the principal place of business.
  6. Branch offices are restricted to the county wherein the principal place of business is located.
- H. Advertising:
1. A school shall not use any name other than its licensed name for advertising or publicity purposes. Nor shall the school use the word "State" in any part of the school name. A licensed school which advertises, solicits patrons, or conducts the business regulated by A.R.S. § 32-2351 et seq., by the use of or under a name other than the name by which the school was licensed, must apply for and obtain an original license for such school before it may lawfully operate.
  2. No driving school advertisement shall indicate in any way that a school can issue or guarantee the issuance of a driver's license, or imply that the school can in any way influence the Division in the issuance of a driver's license or imply that preferential or advantageous treatment from the Division can be obtained.
  3. Schools that are in fact licensed by the Division may in their advertising state they are "LICENSED" but shall not indicate that a school is approved, sanctioned, or in any other way endorsed by the Division.
- I. Professional conduct:
1. No driving school instructor, employee, or agent will be permitted to accompany any student into any examining office rented, leased, or owned by the Division of Motor Vehicles for the purpose of taking a driver license examination.
  2. No driving school instructor, employee, or agent will be permitted to personally solicit any individual on the premises rented, leased, or owned by the Division of Motor Vehicles for the purpose of enrolling them in any professional driving school.
  3. Violation of any of the provisions of this Article may be grounds for the cancellation, suspension or revocation of an instructor's license or a school's license, subject to the provisions of A.R.S. §§ 32-2373 and 32-2391 and these rules.
- J. Records and contracts: Every licensee shall maintain the following records:

1. A permanently bound book or a card file setting forth the name, address, contract number, and terms of payment with respect to every person receiving lessons, lectures, tutoring, instructions of any kind or any other service relating to instructions in the operations of a motor vehicle. The book or card file shall also contain records showing the date, type, and duration of all lessons, lectures, tutoring and instructions including the name of the instructor giving such lessons and the tag number, make and model of vehicle used to conduct the training.
  2. A record of all receipts and disbursements.
  3. If a licensee enters into written contracts with any person or group of persons receiving lessons, lectures, tutoring or instructions relating to the operation of a motor vehicle, the original contract must be given to the student or his agent who executes the contract, and a carbon copy of the contract retained as part of the records of the license.
  4. All records must be retained for three years.
- K. Equipment:**
1. All vehicles used for driver training must be equipped with the following:
    - a. Any motor vehicle with an automatic transmission must be equipped with at least a dual braking device which will enable an accompanying instructor to bring the car under control in case of an emergency.
    - b. Any motor vehicle equipped with a standard transmission must have at least a dual clutch and braking device which will enable an accompanying instructor to bring the car under control in case of an emergency.
  2. All vehicles must be maintained in safe operating conditions at all times.
- L. Suspension, revocation, cancellation and denial of driver training school and driver training instructor licenses:**
1. The superintendent may suspend or revoke the license of any driver training school or driver training instructor:
    - a. If the licensee fails to do anything which is required by the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools and driver training instructors.
    - b. If the licensee does anything which is prohibited by the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools or driver training instructors.
    - c. If the application contains any misstatements or misrepresentations.
  2. No license fee will be refunded in the event a license is suspended or revoked.
  3. The superintendent may deny any application for a driver training school or driver training instructor's license, if the applicant does not qualify for the license under the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools and driver training instructors. Previous revocation, misstatements or misrepresentations may be grounds for denying a license.
- M. The superintendent, upon determining that grounds for cancellation of a license exist, shall give notice thereof to the licensee in writing, and by the notice shall require the licensee to appear before him at a specified time and place, then and there to show cause why his license should not be cancelled. At the time and place fixed by the superintendent, which shall be not less than 10 days after notice, the licensee shall appear and be heard and may have other persons he desires present and testify at the hearing.**

**Historical Note**

New Section recodified from R17-4-512 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**ARTICLE 4. DEALERS**

**R17-5-401. Reserved**

**R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses**

- A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
1. \$100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
  2. \$25,000 from a wholesale motor vehicle dealer,
  3. \$25,000 from a wholesale motor vehicle auction dealer,
  4. \$25,000 from a motor vehicle broker, and
  5. \$20,000 from an automotive recycler.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

**Historical Note**

New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

**R17-5-403. Bond Amount; Motor Vehicle Title Service Business License**

- A. As prescribed under A.R.S. § 28-5005, the Division shall require a \$25,000 bond for a motor vehicle title service company applying for a business license.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

**R17-5-404. Dealer Title Requirement for Vehicle Sale**

For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

**Historical Note**

New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section heading corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

**R17-5-405. Motor Vehicle Dealer Acquisition Contract**

- A. Definitions.
1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).
  2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).
  3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
  4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
  5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
  6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
- B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a form with contents as prescribed under subsection (C).
- C. Content. A dealer acquisition contract shall contain the following information:
1. The heading "Dealer Acquisition Contract;"
  2. The dealer's name and dealer license number;
  3. The dealer's business address and telephone number;
  4. The owner's name, address, and telephone number;
  5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
  6. If there is a lien holder:
    - a. The lien holder's name, address, telephone number;
    - b. Lien balance;
    - c. Prepayment penalties, if any; and
    - d. Other information relevant to the terms and conditions of the lien repayment;
  7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (C)(6)(b);
  8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another vehicle;
  9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
  10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;
  11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
  12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
  13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
  14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
  15. The date the contract is executed;
  16. The dealer's signature; and
  17. The owner's signature.
- D. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
- E. Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the vehicle is sold.
- F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.



#### Historical Note

New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

#### **R17-5-406. Motor Vehicle Dealer Consignment Contract**

##### A. Definitions.

1. "Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).
2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).
3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.

##### B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection (C).

##### C. Content. A dealer consignment contract shall contain the following information:

1. The heading "Dealer Consignment Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, and telephone number;
5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
6. If there is a lien holder:
  - a. The lien holder's name, address, telephone number;
  - b. Lien balance;
  - c. Prepayment penalties, if any; and
  - d. Other information relevant to the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the lien balance is no greater than that disclosed under subsection (C)(6)(b);
8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
12. The expiration date of the consignment contract;
13. An agreement by the dealer to deliver the vehicle to the owner at a specified location on the date that the contract expires or terminates;
14. An agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.

##### D. A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.

##### E. Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the vehicle is sold.

##### F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract.

This Section furnishes only information required in a dealer consignment contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

#### Historical Note

New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

#### **R17-5-407. Motor Vehicle Repossession**

##### A. The Division shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:

1. The vehicle is physically located in this state;
2. A notice of lien is filed with the Division;
3. A completed affidavit from the lienholder is submitted to the Division stating that the vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
  - a. The Vehicle Identification Number (VIN),
  - b. The vehicle model year,
  - c. The vehicle make,
  - d. The registered owner's name,
  - e. The date of repossession,
  - f. The state in which the vehicle is titled,
  - g. The lienholder company name,
  - h. The lienholder agent or representative name,
  - i. Lienholder signature, and
  - j. Notary or Motor Vehicle Division agent signature.

##### B. The Division shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3) and (4) and subsection (C) if all of the following apply:

1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.

##### C. A lienholder may sell a repossessed vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Division. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:

1. The buyer's name;
2. The sale date;
3. Buyer's street address, including the city, state, and zip code;
4. Name of new lienholder, if applicable;
5. New lien date, if applicable;
6. Odometer certification statement, including odometer reading, and an area for the buyer's name and signature to acknowledge the odometer certification;
7. A statement that the buyer is aware of the odometer certification made by the seller;
8. The seller's name;
9. The seller's notarized signature;
10. The seller's address, including city, state, and zip code; and

##### D. A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.

##### E. Disclaimer. The Division has no responsibility relating to foreclosure on real property under A.R.S. Title 33, Chapter 7.

#### Historical Note

New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3).

#### **R17-5-408. Resale of a New Motor Vehicle**

##### A. A new motor vehicle dealer, as defined in A.R.S. § 28-4301, that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).

##### B. A dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:

1. The name of the dealership;
2. A vehicle description, including year, make, and vehicle identification number (VIN);
3. A statement that the vehicle was delivered to a previous purchaser;
4. The printed name of the new purchaser; and
5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.

##### C. The new motor vehicle dealer shall:

1. Provide a copy of the notice under subsection (B) to the new purchaser, and

2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.
- D. The new motor vehicle dealer is not required to submit to the Division the notice under subsection (B) unless otherwise required by state or federal law.
- E. A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter, the intent of the provisions specified in subsection (B).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1).

**ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY**

**R17-5-501. Definitions**

In this Article, unless the context otherwise requires:

1. "Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.
2. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
3. "Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.
4. "Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.
5. "Lightweight motor vehicle" has the meaning in A.R.S. § 28-5201(6).
6. "Managing general agent" has the meaning in A.R.S. § 20-284(A).
7. "Motor carrier" has the meaning in A.R.S. § 28-5201(8).
8. "Motor vehicle" has the meaning in A.R.S. § 28-5201(9).
9. "Motor vehicle liability policy" has the meaning in A.R.S. § 28-4001(4).
10. "Proof of financial responsibility" has the meaning in A.R.S. § 28-4001(7).
11. "Vehicle combination" has the meaning in A.R.S. § 28-5431(3).

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**R17-5-502. Repealed**

**Historical Note**

New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-503. Repealed**

**Historical Note**

New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability and Procedure**

- A. If a motor carrier under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination by an insurance company that reports to the Division under A.R.S. § 28-4148, R17-5-502, or R17-5-503, the motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A), as follows:
  1. At the time of initial motor vehicle registration, or
  2. As notified by the Division under R17-5-506.
- B. An insurance company, its managing general agent, broker, or agent may submit, on behalf of a motor carrier, proof of financial responsibility to the Division.
- C. As proof of financial responsibility, a motor carrier shall submit the original or photocopy of:
  1. A valid liability insurance policy;
  2. A binder dated within 90 days of filing with the Division;
  3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance listed in subsection (E), naming the Arizona Department of Transportation as the Commission;
  4. A completed and signed Certificate of Liability Insurance form listed in subsection (F) naming the Arizona Department of Transportation, Motor Vehicle Division as the certificate holder; or
  5. A certificate of self-insurance issued by the Division after a motor carrier meets the requirements of A.R.S. §§ 28-4007 and 28-4135.
- D. Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
  1. A binder from an insurance company other than the insurance company named in the first binder; or
  2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (C)(5).
- E. A person may obtain a Form E from:
  - Uniform Information Services, Inc.
  - 125 Nagog Park, Acton, Massachusetts 01720;
  - Telephone: (800) 872-0700;
  - Fax: (978) 263-1824; or
  - Web site: [www.uniforminformationservices.com](http://www.uniforminformationservices.com).
- F. A person may obtain a Certificate of Liability Insurance form from:
  - ACORD
  - 1 Blue Hill Plaza, P.O. Box 1529, 15th Floor
  - Pearl River, New York 10965;
  - Telephone: (800) 444-3341 extension 506;
  - Fax: (845) 620-3600; or
  - Web site: [www.acord.org](http://www.acord.org).

**Historical Note**

New Section recodified from R17-4-445 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**R17-5-505. Repealed**

**Historical Note**

New Section recodified from R17-4-446 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**R17-5-506. Failure to Maintain Proof of Financial Responsibility and Suspension**

- A. If a motor carrier's proof of financial responsibility expires, is cancelled, or lapses, with no new proof of financial responsibility submitted to the Division, the Division shall send the motor carrier a dated intent-to-suspend notice by regular mail.
  1. A motor carrier shall, within 20 days after the date of the intent-to-suspend notice, submit to the Division proof of financial responsibility that complies with R17-5-504.
  2. If a motor carrier does not submit proof of financial responsibility within the time prescribed under subsection (A)(1), the Division shall immediately suspend the motor carrier's vehicle registration.
  3. If a motor carrier submits proof of financial responsibility during a suspension, the Division shall immediately reinstate the motor carrier's vehicle registration.
- B. A motor carrier may request a hearing for a vehicle registration suspension as follows:
  1. 17 A.A.C. 1, Article 5 applies to a hearing request and to any hearing.
  2. An Administrative Law Judge shall limit the scope of a hearing to whether the motor carrier has proof of financial responsibility under R17-5-505.

**Historical Note**

New Section recodified from R17-4-447 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**R17-5-507. Repealed**

**Historical Note**

New Section recodified from R17-4-448 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS**

**R17-5-601. Definitions**

In addition to the definitions under A.R.S. § 28-1301, in this Article and A.A.C. R17-4-408, unless the context otherwise requires:

"Alcohol" means ethyl alcohol, also called ethanol.

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorized installer" means a person or entity appointed by a manufacturer, and certified by the Division, to install and service a certified ignition interlock device model provided by the manufacturer.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentration.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the withdrawal of a certification granted by the Division under this Article, which prohibits a previously certified ignition interlock device manufacturer, its authorized installer, or the authorized installer's service center from offering, installing, or servicing an ignition interlock device under Arizona law.

"Certification" means a status granted by the Division under this Article, which permits a certified ignition interlock device manufacturer, an authorized installer, or an authorized installer's service center to offer, install, or service an ignition interlock device under Arizona law.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data storage system" means a computerized recording of all events monitored by an installed ignition interlock device, which may be reproduced in the form of specific reports.

"Director" means the Assistant Director for the Motor Vehicle Division of the Arizona Department of Transportation or the Assistant Director's designee.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance where the participant declares to a Division-certified installer that the vehicle needs to be moved as a condition of law or the participant has a valid and urgent need to operate the vehicle.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the participant.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Fixed-site service center" means a permanent location operated by an installer for conducting business and providing services related to a certified ignition interlock device.

"Free restart" means a function of a certified ignition interlock device that will allow a participant to restart the vehicle, under the conditions provided in R17-5-603, without having to complete another breath alcohol test.

"Ignition interlock investigator" means a Division representative authorized under R17-5-613 to inspect and monitor ignition interlock device manufacturers, installers, and service centers for continuous compliance with Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.

"Illegal start" means the starting of a vehicle equipped with an ignition interlock device without successfully completing the required breath alcohol test.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to Sections 1 and 2 of the National Highway Traffic Safety Administration (NHTSA) Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), 57 FR 11772 to 11787, April 7, 1992.

"Installer" means a manufacturer, a manufacturer's authorized representative, or a person or entity responsible for the day-to-day operations of a service center, who is certified by the Division to install a certified ignition interlock device and to provide certified ignition interlock device related services to the public.

"Installer-certified service representative" means any individual who has successfully completed all requirements under R17-5-705, and has received certification from an installer to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a specific certified ignition interlock device.

"Interlock" means the mechanism which prevents a motor vehicle from starting when the breath alcohol concentration of a participant meets or exceeds a preset value.

"Lock-out condition" means the operational status of a certified ignition interlock device, which after recording any violation of A.R.S. Title 28, Chapter 4, Article 5, immobilizes a participant's vehicle by disallowing further operation of the device. The lock-out feature is built into an ignition interlock device through manufacturer software or firmware, and once activated, the device must be re-set by the manufacturer's authorized installer.

"Manufacturer" means a person or entity that produces a certified ignition interlock device and is certified by the Division to offer the device for installation under Arizona law.

"Manufacturer's representative" means an individual or entity designated by a manufacturer to represent or act on behalf of the manufacturer of a certified ignition interlock device.

"Material modification" means a change to a certified ignition interlock device that affects the functionality of the device.

"Mobile service center" means the portable operation of an installer, whether contained within a vehicle or temporarily erected on location, which includes all personnel and equipment necessary for an installer to conduct ignition interlock device related business and services, separately and simultaneously, with its parent fixed-site service center.

"Negative result" means a test result indicating that the alcohol concentration is less than the startup set point value.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 57 FR 11772 to 11787, April 7, 1992.

"Participant" means a person who is ordered by an Arizona court or the Division to equip each motor vehicle operated by the person with a functioning certified ignition interlock device and who becomes an authorized installer's customer for installation and servicing of the certified ignition interlock device.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the startup set point value.

"Purge" means any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Reference sample device" means a device containing a sample of known alcohol concentration.

"Retest set point" has the same meaning as startup set point.

"Rolling retest" means an additional breath alcohol test required of the participant at random intervals. This test is in addition to the initial test required to start the vehicle.

"Service center" means a certified ignition interlock device service center operated by an installer who meets and maintains all certification and inspection requirements of the Division under R17-5-707, whether operated on a fixed-site or mobile.

"Startup set point" means the alcohol concentration value, established by the Division under R17-5-603, which is determined by the Division to be the point at which, or above, an ignition interlock device shall disable the ignition of a motor vehicle.

"Violation" means any of several events including, but not limited to, high alcohol concentrations, illegal starts, and failures to perform rolling retests.

"Violation reset" means the unplanned servicing of a certified ignition interlock device and the downloading of information from its data storage system by a service center when required as a result of an over-accumulation of violations.

#### Historical Note

New Section recodified from R17-4-709 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration**

- A. An ignition interlock device manufacturer shall obtain certification by the Division under this Article before offering an ignition interlock device model for installation under Arizona law.
- B. After receiving Division certification for an ignition interlock device model under R17-5-604, the ignition interlock device manufacturer is effectively certified by the Division to offer its certified ignition interlock device model for installation under Arizona law.
- C. An ignition interlock device manufacturer shall submit a new application to the Division under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.
- D. Manufacturer certification issued by the Division under this Article shall automatically expire if:
  1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
  2. The manufacturer has no pending application on file with the Division for the certification of a device under R17-5-604.
- E. Once a manufacturer's certification expires, the manufacturer may reapply for certification by submitting a new application to the Division for the certification of a device under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-602 renumbered to R17-5-604; new R17-5-602 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

- A. Accuracy standards. The startup set point value for an ignition interlock device shall be an alcohol concentration of 0.030 g/210 liters of breath. The accuracy of a device shall be 0.030 g/210 liters plus or minus 0.010 g/210 liters. The accuracy shall be determined by analysis of an external standard generated by a reference sample device.
- B. Alveolar breath sample. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. Temperature. A device shall meet the requirements of subsection (A) when used at ambient temperatures of -20° Celsius to 83° Celsius.
- E. Anticircumvention standards. A device shall be designed so that anticircumvention features will be difficult to bypass.
1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of cheating by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
  2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. Operational features.
1. A device shall allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test.
  2. A device shall automatically purge alcohol before allowing analysis.
  3. A device shall have a data storage system with the capacity to sufficiently record and maintain a record of the participant's daily driving activities that occur between each regularly scheduled accuracy and compliance check referenced under R17-5-610 and R17-5-706. All daily driving activity records in the device's data storage system shall be maintained by the installer and the service center and made available to the Division upon request as provided under R17-5-612.
  4. A device shall use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware:
    - a. Shall require device settings and operational features to include, but are not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lock-out conditions; and
    - b. Shall not allow modification of the device settings or operational features by a service center or service representative unless the Division approves the modification under subsection (G).
  5. A device shall record all emergency bypasses in its data storage system.
  6. A device shall require a participant to perform a rolling retest within five to 15 minutes after the initial test required to start an engine. The device shall continuously require additional rolling retests at random intervals of up to 45 minutes after each previously requested retest.
    - a. A device shall emit a warning light, tone, or both, to alert a participant that a rolling retest is required.
    - b. A device shall require a participant to perform a new test to restart an engine if it is inadvertently switched off during or after a rolling retest warning.
    - c. A device shall use the startup set point value as its retest set point value.
    - d. A device shall record, in its data storage system, the result of each rolling retest performed by a participant.
    - e. A device shall immediately require another rolling retest each time a participant refuses to perform a requested rolling retest.
  7. Until a participant successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal of the participant to perform the requested rolling retest.
  8. Upon recording a violation of A.R.S. Title 28, Chapter 4, Article 5, the device shall emit a unique cue, either auditory, visual, or both, to warn a participant that the device will enter into a lock-out condition in 72 hours unless reset by the installer.
  9. When a violation results in a lock-out condition, the device shall:
    - a. Immobilize the participant's vehicle;
    - b. Uniquely record the event in the data storage system; and
    - c. Require a violation reset by the installer.
- G. Modification. No modification shall be made to the design or operational concept of a device after the Division has certified the device for installation under Arizona law.
1. A software or firmware update required to maintain a device is permissible if the update does not modify the design or operational concept of the device.
  2. Replacement, substitution, or repair of a part required to maintain a device is permissible if the part does not modify the design or operational concept of the device.
  3. If a manufacturer determines that an existing Division-certified ignition interlock device model requires a modification that may affect the operational concept of a device, the manufacturer shall immediately notify the Division.

#### Historical Note

New Section recodified from R17-4-709.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-603 renumbered to R17-5-606; new R17-5-603 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-604. Ignition Interlock Device Certification; Application Requirements

- A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Division under this Section.
- B. For certification of an ignition interlock device model, a manufacturer shall submit to the Division a properly completed application form that provides:
1. The manufacturer's name;
  2. The manufacturer's business address and telephone number;
  3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
  6. The following statements, signed by an authorized representative of the manufacturer and acknowledged by a notary public or Division agent:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
    - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
      - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or its authorized installer relating to the installation and operation of the ignition interlock device; and
      - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
    - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
    - d. A statement that the manufacturer agrees to immediately notify the Division of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
  2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
  3. An independent laboratory's report that:
    - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by Sections 1 and 2 of the NHTSA specifications published at 57 FR 11772 to 11787, April 7, 1992. The NHTSA specifications are incorporated by reference and are on file with the Division and the NHTSA Office of Research & Technology (NTS-131), 400 7th St. S.W., Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
    - b. Provides the independent laboratory's name, address, and telephone number; and
    - c. Provides the name and model number of the ignition interlock device tested;
  4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3) and acknowledged by a notary public or Division agent, that states:
    - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists;
    - b. The laboratory tested the ignition interlock device in accordance with Sections 1 and 2 of the NHTSA specifications;
    - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under Sections 1 and 2 of the NHTSA specifications;
    - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device; and
    - e. The laboratory presented accurate test results to the Division;
  5. A list of all authorized installers of the ignition interlock device, including the name, location, telephone number, contact person, and hours of operation of each authorized installer;
  6. A copy of the complete written instructions the manufacturer will provide to its authorized installers under R17-5-609 for installation and operation of the ignition interlock device for which the manufacturer seeks certification. The written instructions shall include a requirement for the installer to affix, to each certified ignition interlock device installed, a warning label that conforms to the criteria prescribed under R17-5-609, as illustrated on the application form provided by the Division;
  7. A copy of the complete written instructions the Manufacturer shall provide to its authorized installers under R17-5-609 for distribution under R17-5-704 to participants and other operators of a vehicle equipped with the ignition interlock device for which the manufacturer seeks certification; and
  8. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
    - a. A product liability policy with a current effective date;
    - b. The name and model number of the ignition interlock device model covered by the policy;
    - c. Policy coverage of at least \$1,000,000;
    - d. The manufacturer as the insured and the state of Arizona as an additional insured;

- e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
- f. The insurance company will notify the Division at least 30 days before canceling the product liability policy.

#### Historical Note

New Section recodified from R17-4-709.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-604 renumbered to R17-5-607; new R17-5-604 renumbered from R17-5-602 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-605. Application Processing; Time-frames; Exception

- A. The Division shall process an application for certification under this Article, and Article 7, only if an applicant meets all applicable application requirements.
- B. The Division shall, within 10 days of receiving an application for certification, provide notice to the applicant that the application is either complete or incomplete.
  - 1. The date of receipt is the date the Division stamps on the application when received.
  - 2. If an application is incomplete, the notice shall specifically identify what required information is missing.
- C. An applicant with an incomplete application shall provide all missing information to the Division within 15 days of the date indicated on the notice provided by the Division under subsection (B).
  - 1. After receiving all of the required information, the Division shall notify the applicant that the application is complete.
  - 2. The Division may deny certification if the applicant fails to provide the required information within 10 days of the date indicated on the notice.
- D. Except as provided under subsection (F), the Director shall render a decision on an application for certification under this Article or Article 7, within 45 days of the date indicated on the notice acknowledging receipt of a complete application, provided to the applicant under subsections (B) or (C).
- E. For the purpose of A.R.S. § 41-1073, the Division establishes the following time-frames for processing an application for certification under this Article or Article 7:
  - 1. Administrative completeness review time-frame: 15 days.
  - 2. Substantive review time-frame: 30 days.
  - 3. Overall time-frame: 45 days.
- F. Established time-frames may be adjusted by the Division as needed to obtain all external agency approvals required for certifying a new ignition interlock device model submitted by a manufacturer under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-605 renumbered to R17-5-608; new R17-5-605 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

- A. An application for certification of an ignition interlock device model is complete when the Division receives:
  - 1. From the manufacturer, a properly prepared application form;
  - 2. From the manufacturer, all additional items required under R17-5-604(C); and
  - 3. From the Arizona Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets NHTSA specifications.
- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or upon finding any of the following:
  - 1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
  - 2. The manufacturer's liability insurance coverage is terminated or canceled;
  - 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  - 4. The manufacturer or independent laboratory provided false or inaccurate information to the Division relating to the performance of the ignition interlock device model;
  - 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with NHTSA specifications; or
  - 6. The Division receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Division shall mail to the manufacturer, written notification of the certification or denial of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Division's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification, the Division's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

#### Historical Note

New Section recodified from R17-4-709.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-606 renumbered to R17-5-609; new R17-5-606 renumbered from R17-5-603 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-607. Cancellation of Certification; Hearing

- A. The Director shall cancel an ignition interlock device model certification and remove the device from its list of certified ignition interlock devices upon finding any of the following:
  - 1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
  - 2. The manufacturer's liability insurance coverage is terminated or canceled;
  - 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  - 4. The manufacturer or independent laboratory provided false or inaccurate information to the Division relating to the performance of the ignition interlock device model;
  - 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with NHTSA specifications;
  - 6. The manufacturer instructs the Division to cancel its certification of the ignition interlock device model; or
  - 7. The manufacturer, its authorized installer, or the device does not comply with this Article or any other applicable rule or statute.
- B. The Division, upon finding any of the conditions described under subsection (A), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
  - 1. Specify the basis for the action; and
  - 2. State that the manufacturer may, within 15 days of the date on the notice, file a written request for a hearing with the Division's Executive Hearing Office to show cause as to why the ignition interlock device certification should not be cancelled.
- C. If a hearing to show cause is timely requested, the Division's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.
- D. Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all decertified ignition interlock devices and facilitate the replacement of each device with a certified ignition interlock device.
- E. The manufacturer of a previously decertified ignition interlock device model may reapply to the Division for certification of the ignition interlock device model under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-607 renumbered to R17-5-610; new R17-5-607 renumbered from R17-5-604 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix A. Renumbered

#### Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix A renumbered to R17-5-610, Appendix A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix B. Renumbered

#### Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix B renumbered to R17-5-610, Appendix B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix C. Renumbered

#### Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix C renumbered to R17-5-610, Appendix C, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-608. Modification of a Certified Ignition Interlock Device Model

- A. A manufacturer shall notify the Division in writing at least 10 days before a material modification is made to a certified ignition interlock device model.
- B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Division, a manufacturer shall:
  - 1. Submit to the Division a completed application form and all additional items required under R17-5-604(C), and
  - 2. Obtain certification of the materially modified ignition interlock device from the Division.
- C. The Division's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

#### Historical Note

New Section recodified from R17-4-709.07 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-608 renumbered to R17-5-611; new R17-5-608 renumbered from R17-5-605 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-609. Manufacturer Referral to Division-certified Installers; Manufacturer Oversight of its Authorized Installers**

- A. A manufacturer shall refer a participant only to a Division-certified installer.
- B. A manufacturer shall provide the Division with a toll-free telephone number for a participant to call to obtain names, locations, telephone numbers, contact people, and hours of operation for its authorized installers.
- C. A manufacturer shall ensure that its authorized installer follows the installation and operation procedures established by the manufacturer.
- D. A manufacturer shall ensure that its authorized installer receives and maintains all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the certified ignition interlock device.
- E. A manufacturer shall ensure that its authorized installer:
  1. Complies with the manufacturer's procedures for removing a certified ignition interlock device from a vehicle, and
  2. Electronically notifies the Division within 24 hours after removing a certified ignition interlock device.
- F. A manufacturer shall ensure that its authorized installer distributes to every participant, and makes available for every person operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's written instructions for the following:
  1. Operating a motor vehicle equipped with the certified ignition interlock device,
  2. Cleaning and caring for the certified ignition interlock device, and
  3. Identifying and addressing any vehicle malfunctions or repairs that may affect the certified ignition interlock device.
- G. A manufacturer shall ensure that its authorized installer provides to every participant, and makes available for any person operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's specified training in how to operate a motor vehicle equipped with the device.
- H. A manufacturer or installer shall provide a warning label, for each certified ignition interlock device installed, which shall:
  1. Be of a size appropriate to each device model;
  2. Have an orange background; and
  3. Contain the following language in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- I. A manufacturer shall ensure that its authorized installer affixes conspicuously to each installed certified ignition interlock device the warning label described under subsection (H).

#### Historical Note

New Section recodified from R17-4-709.08 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-609 renumbered to R17-5-612; new R17-5-609 renumbered from R17-5-606 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-610. Installation Verification; Accuracy Check; Noncompliance and Removal Reporting**

- A. A participant shall have installed in a motor vehicle, only an ignition interlock device certified by the Division under R17-5-604.
- B. A manufacturer shall comply, and ensure that its authorized installer complies, with its written procedures for the installation of a certified ignition interlock device.
- C. Certified ignition interlock device installation verification.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours of installing a certified ignition interlock device.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date; and
    - h. Report Type.
- D. Certified ignition interlock device accuracy and compliance check.
  1. A manufacturer shall ensure that its authorized installer schedules a participant for accuracy and compliance checks as follows:
    - a. 30 days, 60 days, and 90 days after installation of a certified ignition interlock device; and
    - b. At least once every 60 days after the 90-day accuracy and compliance check.
  2. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours after performing an accuracy and compliance check on an installed certified ignition interlock device.
  3. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the accuracy and compliance check shall contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report Type; and
    - i. Noncompliance code and breath alcohol concentration violation count as applicable.
- E. Certified ignition interlock device noncompliance report.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division, within 24 hours after conducting an accuracy and compliance check, when an installed certified ignition interlock device displays evidence of tampering, circumvention, or misuse.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for noncompliance shall indicate the condition of noncompliance and contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report Type; and
    - i. Noncompliance code and breath alcohol concentration violation count as applicable.
- F. Certified ignition interlock device removal report.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours if a certified ignition interlock device is removed before the end of a participant's certified ignition interlock device requirement period.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report Type; and
    - i. Noncompliance code and breath alcohol concentration violation count as applicable.

#### Historical Note

New Section recodified from R17-4-709.09 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-610 renumbered to R17-5-703; new R17-5-610 renumbered from R17-5-607 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit A. Renumbered**

#### Historical Note

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit A renumbered to R17-5-703, Exhibit A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Exhibit B. Renumbered

#### Historical Note

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit B renumbered to R17-5-703, Exhibit B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix A. Repealed

#### Historical Note

Appendix A renumbered from R17-5-607, Appendix A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix B. Repealed

#### Historical Note

Appendix B renumbered from R17-5-607, Appendix B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix C. Repealed

#### Historical Note

Appendix C renumbered from R17-5-607, Appendix C, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Service to Participants

A. A manufacturer shall ensure that its authorized installer provides to each participant a 24-hour emergency phone number for assistance in the event a certified ignition interlock device fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a certified ignition interlock device.

1. Within two hours after receiving a participant's call for emergency assistance, if the authorized installer determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a certified ignition interlock device, the authorized installer shall either:
  - a. Provide telephonically, the technical information required for the participant to resolve the issue; or
  - b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
2. Within 48 hours after receiving a participant's call for emergency assistance, the authorized installer shall either:
  - a. Make the certified ignition interlock device functional, or
  - b. Replace the certified ignition interlock device.

B. A manufacturer shall ensure uninterrupted service to a participant for the duration of the participant's certified ignition interlock device requirement, which shall include facilitating the immediate replacement of an authorized installer if the installer goes out of business or its certification is cancelled by the Division under R17-5-708.

1. If a manufacturer terminates its authorized installer's appointment, or the Division cancels the installer's certification under R17-5-708, the manufacturer shall:
  - a. Obtain participant records from its formerly authorized installer; and
  - b. Provide the participant records to a new authorized installer for retention according to R17-5-612; or
  - c. Retain the participant records according to R17-5-612, if a new authorized installer is not appointed.
2. If a manufacturer appoints a new authorized installer, the manufacturer shall:
  - a. Ensure that the new authorized installer operates either:
    - i. A mobile service center that is located within 75 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; or
    - ii. A service center that is a permanent facility located within 125 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; and
  - b. Notify each participant affected by the appointment of the new authorized installer at least 30 days before the appointment becomes effective.
3. If a manufacturer does not appoint a new authorized installer, or its new authorized installer cannot provide service as prescribed under subsection (2), the manufacturer, at no cost to the participant, shall:
  - a. Provide written notification to all participants affected by the change of authorized installers at least 30 days before the authorized installer is to discontinue service. The written notification shall inform the participant of the manufacturer's responsibility to facilitate removal and replacement of the certified ignition interlock device and shall provide all of the instructions necessary for the participant to successfully exchange the device;
  - b. Remove the device from the vehicle of each affected participant; and
  - c. Facilitate the replacement of each device through a manufacturer with an authorized installer that can provide service as prescribed under subsection (2).
4. A manufacturer shall notify the Division within 72 hours of replacing its authorized installer.
5. A manufacturer shall submit to the Division an updated list of its authorized installers within 10 days after making a change to the list provided to the Division under R17-5-604.

C. Except in an emergency situation, a manufacturer or its authorized installer shall not remove another manufacturer's certified ignition interlock device without the express permission of that manufacturer.

1. If in an emergency situation a manufacturer or its authorized installer removes another manufacturer's certified ignition interlock device, that manufacturer or authorized installer shall return the device to the original installer within 72 hours of the emergency removal; and
  2. The original installer, upon receipt of the device, shall provide to the Division an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.
- D. A manufacturer shall facilitate the immediate replacement of its authorized installer's service center if the service center goes out of business or its Division certification is cancelled under R17-5-708. The manufacturer shall notify the Division within 72 hours of replacing a service center.
1. If an out-of-business or cancelled service center is replaced, the manufacturer shall make all reasonable efforts to obtain, from the service center being replaced, all participant records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by, the new service center.
  2. If an out-of-business or cancelled service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612. The Division shall be notified of this event within 72 hours.
    - a. The manufacturer shall facilitate removal of all installed certified ignition interlock devices no longer serviced by the out-of-business or cancelled service center, and shall bear the cost of replacing each device with a serviceable certified ignition interlock device, even if the replacement device must be provided through an alternate manufacturer.
    - b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
  3. If neither subsection (1) nor (2) can be accomplished, the manufacturer shall, within 60 days:
    - a. Notify its customers and the Division that service will be terminated; and
    - b. Remove each device at no cost to the customer.

#### Historical Note

Section R17-5-611 renumbered from R17-5-608 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-612. Records Retention; Submission of Copies and Quarterly Reports; Periodic Inspections

A. Records retention. A manufacturer shall retain, or ensure that its authorized installer retains, a participant's records for five years after the removal of a certified ignition interlock device. The retained records shall consist of every document relating to installation and operation of the certified ignition interlock device.

B. Copies of records and quarterly reports.

1. A manufacturer shall ensure that its authorized installer or the manufacturer provides copies of participants' records to the Division within 10 days after Division personnel make a request for copies of records, including records relating to installation and operation of the certified ignition interlock device.
2. A manufacturer shall ensure that its authorized installer mails, faxes, or e-mails to the Division, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
  - a. The number of certified ignition interlock devices the authorized installer currently has in service;
  - b. The number of certified ignition interlock devices installed since the previous quarterly report; and
  - c. The number of certified ignition interlock devices removed by the authorized installer since the previous quarterly report.

C. Periodic inspections. The Division shall periodically conduct an inspection at the premises of a manufacturer or its authorized installer, under A.R.S. § 41-1009 and R17-5-613. The inspection shall determine whether the manufacturer, its authorized installer, the service center of the authorized installer, and the installer-certified service representatives are in compliance with this Article and Article 7.

#### Historical Note

Section R17-5-612 renumbered from R17-5-609 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-613. Ignition Interlock Investigator

A. The Division's ignition interlock investigator shall investigate any complaint or report of misconduct brought against a certified ignition interlock device manufacturer, installer, service center, or installer-certified service representative for noncompliance with a provision of Articles 6 or 7 of this Chapter or A.R.S. Title 28, Chapter 4, Article 5.

B. Inspection of a manufacturer, installer, or service center under Articles 6 or 7 of this Chapter shall be conducted in accordance with A.R.S. § 41-1009. The inspection shall include an examination of participant records and verification of an adequate supply of the warning labels and written instructions required to be made available under A.R.S. § 28-1462, R17-5-609, and R17-5-704.

C. The Division's ignition interlock investigator shall perform onsite inspections of a manufacturer, installer, or service center as needed to verify continuous compliance with the Division's ignition interlock program requirements established under Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS**

**R17-5-701. Definitions**

In addition to the definitions under A.R.S. § 28-1301, and unless the context otherwise requires, the definitions under A.A.C. R17-4-408 and R17-5-601 apply to this Article.

**Historical Note**

New Section recodified from R17-4-801 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements**

- A. A manufacturer's authorized installer shall be certified by the Division before installing a certified ignition interlock device under Arizona law.
- B. A manufacturer's authorized installer shall obtain from the manufacturer, as provided under R17-5-609, all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the manufacturer's certified ignition interlock device.
- C. A manufacturer's authorized installer shall submit to the Division a properly completed application for installer certification. The application for installer certification shall provide:
1. The authorized installer's name;
  2. The authorized installer's business address and telephone number;
  3. The authorized installer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  5. The name and model number of each certified ignition interlock device the authorized installer intends to install; and
  6. The following statements, signed by the authorized installer and acknowledged by a notary public or Division agent:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
    - b. A statement that the authorized installer agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
    - c. A statement that the authorized installer agrees to comply with all requirements under this Article; and
    - d. A statement that the authorized installer agrees to immediately notify the Division of any change to the information provided on the application form.
- D. The Division shall process an application for installer certification as provided under R17-5-605.
- E. Division certification issued to an authorized installer under this Article shall not expire as long as the installer remains authorized by a manufacturer to install its certified ignition interlock device model under Arizona law.
1. If a Division-certified installer is no longer authorized by a manufacturer to install its certified ignition interlock device, the installer's certification is immediately expired.
  2. If the installer again becomes authorized by a manufacturer to install its certified ignition interlock device, the installer may reapply to the Division for certification under this Article by submitting a new application.
- F. A Division-certified ignition interlock device installer shall notify the Division within 24 hours of making a decision to relocate a fixed-site service center.
- G. A Division-certified ignition interlock device installer shall train and certify each of its service representatives on the proper installation of a certified ignition interlock device before allowing the service representative to install the certified ignition interlock device.
- H. A Division-certified ignition interlock device installer shall provide to the Division a current list of the names of each of its certified service representatives. The installer shall electronically notify the Division within 24 hours of making a change to its list.

**Historical Note**

New Section recodified from R17-4-805 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-703. Ignition Interlock Device Installer Bond Requirements**

- A. Before installing, servicing, or removing a certified ignition interlock device, an installer shall:
1. Be appointed by a manufacturer as an authorized installer of its certified ignition interlock device;
  2. Obtain an ignition interlock installer bond from a surety company authorized by the Arizona Department of Insurance to conduct general surety business in Arizona. The ignition interlock installer bond shall be:
    - a. In the amount of \$25,000;
    - b. On the approved form provided by the Division; and
    - c. Maintained for as long as the installer intends to install, service, or remove Division-certified ignition interlock devices under Arizona law;
  3. Submit the original completed ignition interlock installer bond to the Arizona Department of Transportation, Motor Vehicle Division, Ignition Interlock Program, 1801 W. Jefferson St. MD530M, Phoenix, AZ 85007; and
  4. Receive Division certification under R17-5-702.
- B. An installer authorized by a manufacturer and certified by the Division to install, service, or remove more than one certified ignition interlock device model needs only one bond.

**Historical Note**

New Section recodified from R17-4-806 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). Section R17-5-703 renumbered from R17-5-610 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit A. Repealed**

**Historical Note**

Exhibit A renumbered from R17-5-610, Exhibit A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit B. Repealed**

**Historical Note**

Exhibit B renumbered from R17-5-610, Exhibit B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-704. Division-certified Installer Responsibilities**

An authorized installer certified by the Division to install a certified ignition interlock device shall:

1. Follow the installation and operating procedures established, and provided, by the manufacturer;
2. Acquire and maintain all necessary training and skills specified by the manufacturer for installing, troubleshooting, examining, and verifying the proper operation of its certified ignition interlock device;
3. Comply with all of the manufacturer's procedures for removing the certified ignition interlock device from a vehicle;
4. Electronically notify the Division within 24 hours after removing a certified ignition interlock device under R17-5-611;
5. Provide to the manufacturer, or to the Division if delegated by the manufacturer, an accurate electronic reporting of all applicable information required of the manufacturer under R17-5-610;
6. Provide to every participant, and make available for every person operating a motor vehicle equipped with the certified ignition interlock device, a copy of the manufacturer's written instructions for the following:
  - a. Operating a motor vehicle equipped with the certified ignition interlock device;
  - b. Cleaning and caring for the certified ignition interlock device; and
  - c. Identifying and addressing vehicle malfunctions or repairs that may affect the certified ignition interlock device;
7. Ensure that each participant receives an operator's manual and is further instructed regarding all of the following:
  - a. How to use the system;
  - b. How to obtain service for the system;
  - c. How to find answers to any additional questions;
  - d. How the alcohol retest feature works;
  - e. How drinking alcohol before a test may result in a reading of sensitive or fail;
  - f. How the handset of the device shall not be removed, except by an installer-certified service representative;
  - g. How missing an appointment for a regularly scheduled accuracy check will cause the certified ignition interlock device to enter into a lock-out condition that will emit a unique cue, either auditory, visual, or both, to warn the driver that after 72 hours the vehicle will not start. It shall be the responsibility of each participant to have the car towed to the service center if a lock-out condition occurs;
  - h. How noncompliance with a regularly scheduled accuracy check shall result in suspension of the participant's driver license until proof of compliance is submitted to the Division under A.R.S. § 28-1463; and the duration of the participant's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1464 and A.A.C. R17-4-408;
  - i. What the penalties are for tampering with, circumventing, or misusing the system;
  - j. What will happen after failing a start-up breath alcohol test; and
  - k. What will happen after failing a rolling retest.



8. Ensure that each participant demonstrates:
  - a. A properly delivered alveolar breath sample; and
  - b. An understanding of how the abort test feature works.
9. Affix conspicuously, the warning label provided by the Manufacturer under R17-5-609.
10. Check each device for evidence of tampering at least once every 60 days or more frequently if needed. This anticircumvention check shall be conducted at each participant's regularly scheduled accuracy and compliance check required under R17-5-610.
11. Notify the Division electronically under R17-5-610 if any evidence of tampering is discovered.

#### Historical Note

New Section recodified from R17-4-807 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-705. Installer-certified Service Representatives

##### A. Initial certification.

1. To achieve certification as a service representative, an individual shall obtain written documentation from a Division-certified ignition interlock device installer documenting that the individual is currently trained in each aspect involved with the specific certified ignition interlock device for which the individual seeks certification to install or service.
2. An installer shall not certify as a service representative, any individual with a felony conviction in the five years preceding the individual's request for certification. In this Section, conviction means that a court of competent jurisdiction adjudicated the individual guilty.
3. The Division, with advance notice to the installers, may require additional standards for installer certification of its service representatives when needed to ensure compliance with the Division's ignition interlock program.

##### B. Proficiency requirements.

1. It is the responsibility of the installer to ensure that its certified service representatives maintain proficiency in each aspect involved with each specific certified ignition interlock device model the individual is certified to install or service.
2. The Division's ignition interlock investigator may at any time require an installer-certified service representative to demonstrate competency in the installation, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing or removal of a specific certified ignition interlock device. A failure of the installer-certified service representative to demonstrate proficiency to the Division's ignition interlock investigator may result in disciplinary action against the installer as provided under R17-5-707.

#### Historical Note

New Section recodified from R17-4-808 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-706. Accuracy and Compliance Check; Requirements

- A. An installer-certified service representative shall inspect, maintain, and check each certified ignition interlock device for calibration accuracy and operational performance before the device is placed into, or returned to, service.
- B. The installer-certified service representative shall perform each accuracy and compliance check in accordance with NHTSA specifications at a service center authorized by the installer and certified by the Division under R17-5-707.
- C. The accuracy and compliance check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
  1. Accuracy standards as prescribed under R17-5-603;
    - a. The device shall be calibrated before placed into, or returned to, service.
    - b. The device shall be subjected to a calibration test before returning it to service. This test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The installer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The test result described herein shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
  2. Anticircumvention standards and operational features as prescribed under R17-5-603.
- D. The calibration test referenced under subsection (C)(1) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device shall be examined for evidence of tampering and circumvention while it is still attached to the vehicle.
- E. If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.
- F. If at any time an individual device fails to meet the provisions of this Section, the manufacturer, installer, service center, or installer-certified service representative shall either:
  1. Repair, recalibrate, and retest the device to ensure that it does meet all applicable standards; or
  2. Remove the device from service.

#### Historical Note

New Section recodified from R17-4-501 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-707. Certification and Inspection of Service Centers; Application

- A. A service center, whether located on a fixed site or mobile, shall be approved and certified by the Division under this Article before it is used by an installer to conduct certified ignition interlock device related business in this state.
- B. For Division approval and certification of a service center, an installer shall submit to the Division a separate application for each individual service center the installer intends to use for conducting certified ignition interlock device related business in this state.
- C. On an application for the approval and certification of a service center, available from the Division, an installer shall identify:
  1. The physical location of the service center;
  2. The ignition interlock device, or devices, to be merchandised and serviced at the location; and
  3. The reference sample device, or devices, that will be used at the location.
- D. An installer shall attach, to the application submitted to the Division under subsection (B), a statement from the manufacturer acknowledging that the installer is authorized to install the certified ignition interlock device, or devices, described on the application.
- E. An installer applying for Division approval and certification of a service center shall agree to:
  1. Allow the Division access to the service center for inspection under subsection (G); and
  2. Comply with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5.
- F. For Division approval and certification of a service center, the installer's ignition interlock device testing facilities, equipment, and the procedures used in the service center shall meet the following conditions:
  1. A fixed-site service center shall be located in a facility that properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and removing a specific ignition interlock device. The installer shall:
    - a. Provide a designated waiting area for the participant that is separate from the installation area; and
    - b. Ensure that no participant witnesses installation of the certified ignition interlock device.
  2. A mobile service center shall be equipped with the same materials and capacities prescribed under subsection (1). An installer or service representative operating a mobile service center shall:
    - a. Designate a waiting area for the participant that is separate from the area used for the installation; and
    - b. Ensure that no participant witnesses installation of the certified ignition interlock device.
  3. The installer, whether operating a fixed-site service center, or mobile, shall ensure that its certified service representatives utilize all of the following:
    - a. The analysis of a reference sample such as headspace gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the Division. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the Division upon request.
    - b. The startup set point value established under R17-5-603. All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
    - c. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.
  4. Only a properly trained installer-certified service representative shall perform certified ignition interlock device related services rendered through a service center.
    - a. The installer shall maintain sufficient staff at each service center to ensure an acceptable level of service. The service center shall always be staffed with at least one certified service representative.
    - b. The installer shall schedule accuracy and compliance checks at each service center in a manner that will not deprive a participant of an acceptable level of service.
    - c. The installer's software shall document the certified service representative performing each accuracy and compliance check and shall record the date each service is performed.
    - d. Division-certified installers may train potential certified service representatives in the service center only under the direct supervision of a currently certified service representative.
  5. The installer shall agree to:
    - a. Submit a violation to the Division as prescribed under R17-5-610 no later than 24 hours after the installer discovers the violation;
    - b. Maintain complete records of each device installation for five years from the date of its removal;
    - c. Require each applicant seeking installer certification as a service representative to certify that he or she has not been convicted of a felony within the five years preceding the date of application;

- d. Retain the five-year felony certification required of each installer-certified service representative under subsection (c) for five years after the date of the employee's separation from employment; and
- e. Make available to the Division upon request, either by inspection or in hardcopy form, all records relating to the installer's ignition interlock device operations.
6. The installer shall ensure that all anticircumvention features are activated on each installed certified ignition interlock device.
7. The installer shall install and inspect each certified ignition interlock device as provided under this Article.
  - a. Each time an installer uploads the information from a participant's certified ignition interlock device, the installer-certified service representative shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period.
  - b. The calibration test referenced under R17-5-706 shall be performed if the downloaded device information indicates that the device has experienced an interruption in service or was completely disconnected.
8. The installer shall agree to abide by conditions for the removal of an ignition interlock device, including but not limited to the following:
  - a. No ignition interlock device shall be removed without notifying the Division of the removal under R17-5-610.
  - b. A service representative or service center shall not remove the certified-ignition interlock device of another manufacturer, except in an emergency, or other special circumstance authorized by the Division. All such removals shall be documented and reported to the Division. All device removal records shall be retained as prescribed under R17-5-612.
  - c. When a participant requests to exchange one manufacturer's device for the device of another manufacturer, the installer of the original device shall notify the Division of the device removal under R17-5-610.
- G. The Division may cancel the certification of an installer or its service center if the installer or service center is found to be operating in violation of any provision under this Article or A.R.S. Title 28, Chapter 4, Article 5. To ensure continuous compliance with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5, the Division's ignition interlock investigator may inspect an installer's service center under A.R.S. § 41-1009.
- H. An installer shall designate a custodian of records who shall, if required in an administrative hearing or court proceeding, provide testimony concerning the interpretation of data storage system records and answer questions concerning the installer's certification and compliance with the Division's ignition interlock program requirements.
- I. Before issuing certification, the Division may perform an onsite evaluation of a service center to verify compliance with this Article.
- J. After verifying compliance with subsections (A) through (F), the Division shall issue a certificate to the installer and each service center that shall remain valid until cancelled by the Division or terminated by the installer or service center. Issuance of a certificate to an installer or service center under this Section shall be evidence that the installer's service center has met all of the criteria necessary for approval and certification by the Division.
- K. Certification of the installer's service center is contingent upon the installer's agreement to conform with and abide by all directives, orders, and policies issued by the Division regarding any service center activities regulated by the Division under this Article and A.R.S. Title 28, Chapter 4, Article 5, which may include:
  1. Program administration,
  2. Reports,
  3. Records and forms,
  4. Inspections,
  5. Methods of operations and testing protocol,
  6. Personnel training and qualifications,
  7. Criminal history considerations for installer-certified service representatives, and
  8. Records custodian.
- L. Certification issued under this Section may be cancelled by the Division if the installer, service center, or installer-certified service representative violates or is not in compliance with a provision of this Article or A.R.S. Title 28, Chapter 4, Article 5, or the certified ignition interlock device equipment it is authorized by the manufacturer to install no longer meets the requirements provided under Article 6 of this Chapter.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-708. Cease and Desist; Denial or Cancellation of Certification; Appeal; Hearing**

- A. If the Director has reason to believe that a Division-certified installer or service center is operating in violation of a provision under this Article or A.R.S. Title 28, Chapter 4, Article 5, the Director shall immediately issue and serve a cease and desist order on the installer or service center by personal delivery or by mail to its last known address.
  1. On receipt of a cease and desist order, an installer or service center shall immediately take action as specified in the order or cease and desist from engaging in any further activity authorized under this Article or A.R.S. Title 28, Chapter 4, Article 5.
  2. On failure of an installer or service center to comply with a cease and desist order, the Director shall issue an immediate cancellation of its installer or service center certification.
- B. Appeal of a denial of application or cancellation of certification. If the Division denies a pending application for certification, or cancels a certification previously issued to an installer or its service center, the installer or service center may appeal the action as follows:
  1. Within 15 days after receipt of a notice of denial of application or a notice of cancellation of certification, the installer or service center may file a written request for a hearing on the issue of the denial or cancellation with Division's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
  2. If a hearing on the issue of the denial or cancellation is timely requested, the Division's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of an installer or service center's certified activities.
  3. Within 10 days after a hearing, the Hearing Officer shall issue to the installer or service center a written decision, which shall:
    - a. Provide findings of fact and conclusions of law; and
    - b. Grant the application, deny the application, or cancel the certification.
  4. If the Hearing Officer affirms the denial of application or cancellation of certification, the installer or service center may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 30 days from the date of the decision and order. The denial of application or order of cancellation shall not be suspended during pendency of an appeal.
- C. After denial of an application, or cancellation of a certification, an installer or service center may reapply to the Division for a new certification by completing a new application and meeting all certification requirements under this Article. A cancellation does not prohibit a manufacturer, installer, or service center from submitting a subsequent application for certification if all certification requirements are met.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

### ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

#### **R17-5-801. Definitions**

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

"Company" means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person's driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"EDI" means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

"EDI reporting" means the weekly computer-to-computer transmission of data from a company to the Division.

"Error return" means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

"FEIN" means the federal employer identification number or federal tax identification number used to identify a business entity.

"FTP" means file transfer protocol, which is a common protocol used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

"Information exchange" means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

"MVD" means the Arizona Department of Transportation's Motor Vehicle Division.

"NAIC" means the National Association of Insurance Commissioners.

"Private information network" means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

"Reportable activity" means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

"Self-insurer" means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

"Service provider" means a person or entity that provides the connection to a private information network for EDI reporting.

"SR22" means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

"SR26" means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

"Value-added Network" means a private network provider that is hired by a company to facilitate EDI or provide other network services.

"X12" means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

"X12 (TS811)" means X12 Transaction Set 811, Consolidated Service Invoice - Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability**

A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

B. Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Division-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-803. Insurance Company Reportable Activity**

A. A company shall transmit to the Division:

1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
2. A statement of inactivity, if no reportable activity occurred by the reporting date.

B. For the purpose of this Article, reportable activity shall include:

1. A policy cancellation;
2. A policy non-renewal;
3. A new policy issuance;
4. A vehicle added to a policy;
5. A vehicle deleted from a policy;
6. A policy reinstatement; and
7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.

C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-804. Record Matching Criteria for a Vehicle-specific Policy**

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy**

A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The MVD Customer number of the insured:
  - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
  - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
2. The policy number; and
3. The NAIC number of the reporting company.

B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the MVD Customer number.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule**

A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Division-authorized EDI reporting methods:

1. EDI reporting by information exchange; or
2. EDI reporting by encrypted FTP.

B. A company shall transmit all reportable activity to the Division at least once every seven days.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-807. X12 Data Format for Policy Receipt and Error Return**

A. Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.

B. Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance**

A. The Division shall:

1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.

B. All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing**

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

1. Send to the company, a dated written notice, which:
  - a. Identifies the business week or reporting period in which the company did not submit the required information;
  - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
  - c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
  - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability**

- A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
  2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
  3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and
  4. Provides a business office contact for the company with a current phone number and mailing information.
- B. A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:
1. Applicant's name;
  2. Business name, if applicable;
  3. Mailing address, city, state, and ZIP code;
  4. A selection of coverage type:
    - a. Public liability only; or
    - b. Public liability and property damage;
  5. Number of vehicles in the applicant's fleet;
  6. A selection list that describes the nature of the applicant's business;
  7. A description of any hazardous materials transported by type, class, and weight;
  8. A report of all accidents in the prior 39-month period before the application date;
  9. The applicant's signature and official business title to certify that all information is true and correct; and
  10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.
- C. Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
  2. An annual financial report.
- D. On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E. An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division  
Financial Responsibility Unit  
P.O. Box 2100, Mail Drop 535M  
Phoenix, AZ 85001-2100
- F. A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G. A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.
- H. A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.
- I. In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D), or
  2. A self-insurer no longer owns the covered business or fleet.
- J. For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability**

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

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