

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY – TOW TRUCKS

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R13-3-701 | Amend |
| R13-3-703 | Amend |
| R13-3-902 | Amend |
| R13-3-1201 | Amend |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 41-1713(A)(4)
Implementing statute: A.R.S. § 41-1830.51
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Expedited Rulemaking Docket Opening: In this Issue.
- 4. The agency’s contact person who can answer questions about the rulemaking:**
Name: Anthony Gerard, Captain
Address: Arizona Department of Public Safety
POB 6638, Mail Drop 1240
Phoenix, AZ 85086
Telephone: (928) 773-3691
E-mail: agerard@azdps.gov
- 5. An agency’s justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
The agency is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027(A) (3), (4) and (6); where the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated; makes an

address change; updates an incorporated by reference and state statute without material change and repeals rules that are outdated and no longer necessary for the operation of state government..

R13-3-701 requires a statutory change from A.R.S. § 41-1830.51 to A.R.S. § 28-1108. The statutory reference had previously changed and a technical fix with the Secretary of State's Office was conducted in 2016. As of the most recent legislative session however, § 28-1108 was re-established and needs to be incorporated back into the rule in place of § 41-1830.51.

R13-3-703 requires a repeal of Paragraph 2 and renumbered as the grandfathering time period has elapsed.

R13-3-902 requires an amendment to Paragraph (E)(3)(a) to include the mail drop code in the address.

R13-3-1201 requires an amendment to Paragraph (A)(2) to point to the incorporated by reference document in R17-5-202. The rule also requires the same statutory change as R13-3-701.

The Department received a rulemaking waiver from Mr. Tim Roemer, Public Safety Policy Advisor to Governor Ducey on September 27, 2018.

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

The Department did not review any studies.

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

The rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

Under A.R.S. § 41-1027, the expedited rulemaking is exempt from this requirement.

9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:

See Item #8.

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

Date: To be determined.

Time:

Location: Arizona Department of Public Safety
Public Services Center – Auditorium (check in with security in the lobby)

2222 W Encanto Blvd

Phoenix, Arizona 85009

Close of record: To be determined.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

R13-3-902 requires a permit for each individual tow truck. As 13 A.A.C. 3 sets safety standards and inspections for each individual tow truck; therefore, a general permit to blanket cover an entire tow truck fleet is not possible.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

49 CFR 391.45 as incorporated by reference. The rules are not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on

business in other states:

No person submitted an analysis to the Department comparing the rule's business competitiveness impact.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R13-3-120 includes 49 CFR 391.45 and points to the incorporated by reference document list in R17-5-202.

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY – TOW TRUCKS

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE

INSPECTION

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND

COMPANIES

Section

R13-3-701 Definitions

R13-3-703 Enforcement Date

R13-3-902 Inspection by the Department

R13-3-1201 Tow Truck Agent Company Requirements

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

R13-3-701. Definitions

A. The definitions in A.R.S. §§ 28-101 and 41-1701 apply to this Chapter.

B. In this Chapter:

1. "Alter" means adding, modifying, or removing any equipment or component after a tow truck has received a permit decal from the Department, in a manner that may affect the operation of the tow truck, compliance with A.R.S. § ~~41-1830.51~~ 28-1108 and this Chapter, or the health, safety, or welfare of any individual.
2. "Bed assembly" means the part of a tow truck that is located behind the cab, is attached to the frame, and is used to mount a boom assembly, hoist, winch, or equipment for transporting vehicles.
3. "Boom assembly" means a device, consisting of sheaves, one or more winches, and wire rope, that is attached to a tow truck and used to lift or tow another vehicle.
4. "Collision" means an incident involving one or more moving vehicles resulting in damage to a vehicle or its load that requires the completion of a written report of accident under A.R.S. § 28-667(A).
5. "Collision recovery" means initial towing or removing a vehicle involved in a collision from the collision scene.
6. "Denial" means refusal to satisfy a request.
7. "Department" means the Arizona Department of Public Safety.
8. "Director" means the Director of the Arizona Department of Public Safety or the Director's designee.
9. "Emergency brake" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle after a failure of the service brake system.
10. "Flatbed" means an open platform that is located behind the cab and attached to the frame of a truck.
11. "G.V.W.R." means Gross Vehicle Weight Rating, the value specified by the manufacturer as the fully assembled weight of a single motor vehicle.
12. "Hook" means a steel hook attached to an end of a wire rope or chain.
13. "Parking brake system" means the electrical, mechanical, hydraulic, or air brake components used to hold the tow truck or combination under any condition of loading to prevent movement when parked.
14. "Permit decal" means the non-transferable decal that a tow truck company is required to obtain from the Department before operating a tow truck for the purpose of towing a vehicle.
15. "Person" means the same as in A.R.S. § 1-215.
16. "Power-assisted service brake system" means a service-brake system that is equipped with a booster to supply additional power to the service-brake system by means of air, vacuum, electric, or hydraulic pressure.
17. "Power-operated winch" means a winch that is operated by electrical, mechanical, or hydraulic power.
18. "Service-brake system" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle in motion.
19. "Snatch block" means a metal case that encloses one or more pulleys and can be opened to receive a wire rope and redirect energy from a winch.
20. "State" means the state of Arizona.

21. "Steering wheel clamp" means a device used to secure in a fixed position the steering wheel of a vehicle being towed.
22. "Suspension" is the temporary withdrawal of the tow truck permit decal because the Department determines the tow truck or tow truck agent is not in compliance with one or more requirements of this Chapter.
23. "Tow bar" means a device attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
24. "Tow plate" means a solid metal support attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
25. "Tow sling" means two or more flexible straps attached to the wire rope or boom assembly of a tow truck to hoist a towed vehicle by chains, straps, or hooks.
26. "Tow truck" means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles. The following are tow trucks:
 - a. A truck with a flatbed equipped with a winch;
 - b. A truck drawing a semi-trailer or trailer equipped with a winch;
 - c. A motor vehicle that has a boom assembly or hoist permanently attached to its bed or frame;
 - d. A motor vehicle that has a tow sling, tow plate, tow bar, under-lift, or wheel-lift attached to the rear of the vehicle; and
 - e. A truck-tractor drawing a semi-trailer equipped with a winch.
27. "Tow truck agent" means an individual who operates a tow truck on behalf of a tow truck company, and includes owners, individuals employed by the tow truck company, and independent contractors.
28. "Tow truck company" means a person that owns, leases, or operates a tow truck that travels on a street or highway to transport a vehicle, including, but not limited to a vehicle that is damaged, disabled, unattended, repossessed, or abandoned.
29. "Truck-tractor protection valve" means a device that supplies air to the service brake system of a trailer to release the service brakes while the trailer is being towed by a truck- tractor, or to activate the service brakes if the supply of air from the truck-tractor to the trailer is disconnected or depleted.
30. "Under-lift" means an electrical, mechanical, or hydraulic device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its axles or frame.
31. "Vehicle" means the same as in A.R.S. § 28-101.
32. "Wheel lift" means an electrical, hydraulic, or mechanical device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its tires or wheels.
33. "Winch" means a device used for winding or unwinding wire rope.
34. "Wire rope" means flexible steel or synthetic strands that are twisted or braided together and may surround a hemp or wire core.
35. "Work lamp" means a lighting system that is mounted on a tow truck capable of illuminating an area to the rear of the tow truck.

R13-3-703. Enforcement Dates

As of the effective date of Articles 7 through 13, a tow truck agent shall ensure that a tow truck:

1. Introduced into the state on or after the effective date of Articles 7 through 13 meets the requirements of Articles 7 through 13;
2. ~~Registered and operating as a tow truck in the state before the effective date of Articles 7 through 13, either meets the requirements of Articles 7 through 13 or Articles 1 through 6 until June 1, 2010, at which time the tow truck shall meet the requirements of Articles 7 through 13;~~
- 3.2. Sold to a new owner meets the requirements of Articles 7 through 13 before operating as a tow truck within this state; or
- 4.3. Not included in the definition of “tow truck” in R13-3-701 before the effective date of Articles 7 through 13, meets the requirements of Articles 7 through 13 within six months of the effective date of Articles 7 through 13 when operating as a tow truck in this state.

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION

R13-3-902. Inspection by the Department

- A. The Department shall inspect a tow truck for compliance with this Chapter as soon as possible after the tow truck inspection application form is filed and no later than seven days after the application form is filed.
- B. The Department may conduct unannounced, in-service inspections of a tow truck at the roadside, at the company’s place of business, or any reasonable time and place to determine the condition of the tow truck.
- C. The Department shall issue tow truck permit decals and identification number decals individually for each approved tow truck.
- D. When a tow truck inspection is conducted under subsection (A) or (B), the following apply:
 1. Department inspectors shall examine the tow truck for compliance with the safety requirements and specifications for the tow truck class under this Chapter.
 2. If the Department finds that the tow truck complies with this Chapter, the Department shall issue an inspection report and if applicable, a permit decal.
 3. If the Department finds that the tow truck does not comply with this Chapter, but has no deficiency listed in R13-3-1201(C)(7), the Department shall issue an inspection report that:
 - a. Specifies the deficiencies found,
 - b. Requires corrective measures, and
 - c. Allows five calendar days for the tow truck agent to correct the deficiencies.
 4. If the Department finds that the tow truck does not comply with this Chapter because of deficiencies listed in R13-3-1201(C)(7), the Department shall not issue a permit decal but shall issue an inspection report that:
 - a. Specifies the deficiencies found, and
 - b. Requires corrective measures.
- E. A tow truck agent shall ensure that a legible copy of the most recent tow truck

inspection report is kept in the driver's compartment area of the tow truck and is produced upon demand to any peace officer. The Department may suspend a tow truck permit decal for failure to comply with this subsection.

1. A tow truck agent shall ensure that:
 - a. A permit decal is affixed to the lower outside right corner of the tow truck's windshield, and
 - b. An identification number decal is permanently affixed to the driver's compartment area.
2. The Department may suspend a permit decal for failure to maintain the permit decal or identification number decal in compliance with subsection (E)(1).
3. If a tow truck inspection report, permit decal, or identification number decal is lost, damaged, destroyed, or stolen, the tow truck company shall immediately notify the Department.
 - a. The tow truck company shall provide notification in writing to Arizona Department of Public Safety, P.O. Box 6638, Mail Drop 1240, Phoenix, AZ 85005-6638, and include the name of the tow truck agent who registered the tow truck and the number of the lost, damaged, destroyed, or stolen inspection report, permit decal, or identification number decal.
 - b. Upon receipt of the notification, the Department shall issue the replacement inspection report, permit decal, or identification number decal.

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

R13-3-1201. Tow Truck Agent and Company Requirements

- A.** A tow truck company shall ensure that each tow truck agent:
1. While operating a tow truck possesses and carries a valid driver's license for the class of tow truck operated;
 2. While operating a tow truck possesses and carries a current medical examination certificate in accordance with 49 CFR 391.45 (~~October 1, 2003~~) as ~~incorporated by reference~~ referenced in A.A.C. R17-5-202;
 3. Does not operate a tow truck if the agent has more than two moving violation convictions within the previous 12 months;
 4. Possesses the skill and knowledge to rig, move, pick up, and transport a vehicle without causing avoidable damage to the vehicle or other property;
 5. Has not consumed any alcoholic beverage within four hours of operating the tow truck;
 6. Is not using or under the influence of alcohol or any of the following substances as defined in A.R.S. § 13-3401 while operating a tow truck:
 - a. Peyote;
 - b. Vapor-releasing substance containing a toxic substance;
 - c. Marijuana;
 - d. Dangerous drugs;

- e. Narcotic drugs; or
 - f. Prescription-only drug unless the tow truck agent obtains the prescription-only drug pursuant to a valid prescription.
7. Has not been convicted of committing a crime involving fraud, embezzlement, or theft in the five years before operating a tow truck and has never been convicted of committing a felony homicide, felony kidnapping, felony assault, felony sexual offense, or felony robbery;
 8. Has not been convicted under A.R.S. § 28-1381 (driving while under the influence of narcotics, dangerous drugs, or intoxicating beverages) or A.R.S. § 28-693 (reckless driving) while engaged in the operation of a tow truck; and
 9. Does not operate a tow truck while the agent's license to drive is suspended under A.R.S. § 28-1321 (Implied Consent Law), A.R.S. § 28-3473 (license suspension or revocation), or A.R.S. § 28-4141 (suspended license, no insurance).
- B.** A tow truck agent shall:
1. Comply with A.R.S. § ~~41-1830.51~~ 28-1108;
 2. Permit a peace officer or other duly authorized agent of a law enforcement agency to inspect a tow truck to determine compliance with the requirements of this Chapter. The inspection may be conducted without notice at any reasonable time and place; and
 3. Have a certification from a licensed testing facility certifying the tested line-pull of the winch or the tested lifting capacity of the boom assembly, if the tow truck is equipped with a homemade boom assembly or homemade winch.
- C.** A tow truck agent shall not:
1. Operate a tow truck without an identification number and a legible copy of a tow truck inspection report, as required by this Chapter;
 2. Transfer a permit decal or tow truck inspection report from one tow truck to another;
 3. Tow or move a vehicle from a highway, street, or public property without prior authorization from the owner or operator of the vehicle, the owner's agent, a person responsible for maintaining the public property, or a law enforcement officer. The tow truck agent may move, but shall not tow, a vehicle to extract an individual from wreckage or to remove a hazard to life or property at a collision scene;
 4. Use a hand-operated or electric winch for collision recovery work;
 5. Operate a tow truck for collision recovery work unless certified for collision recovery;
 6. Use a flatbed tow truck with a G.V.W.R. of less than 14,001 pounds to transport more than one vehicle unless the additional vehicle is a golf cart, a motor-driven cycle, or a trailer that weighs less than 1,500 pounds;
 7. Operate a tow truck that has one or more of the following defects;
 - a. Both warning light assembly lights missing or inoperative;
 - b. All load securement devices missing or defective;
 - c. A portable lamp not in compliance with A.R.S. §§ 28-925(A), 28-927 or 28-939, if a portable lamp is required;

- d. Any steering axle tire with less than 4/32-inch tread depth in one major groove;
 - e. For an axle other than a steering axle, a tire with less than 2/32-inch tread depth and for a dual wheel axle, both tires on the same side with less than 2/32-inch tread depth;
 - f. Any flat tire or tire with cord exposed by cut or wear;
 - g. Any tow plate, tow bar, tow sling, wheel-lift, or under-lift exhibiting wear in excess of manufacturer standards at any pivot point or any crack in a structural component;
 - h. Wire rope in violation of R13-3-1106;
 - i. Any component not maintained within manufacturer standards; or
 - j. A deficiency noted on an inspection report after the time-frame available to the tow truck agent to correct deficiencies has elapsed;
8. Equip a tow truck with homemade boom assembly or homemade winch, unless the tow truck company has a certification from a licensed testing facility certifying the tested line pull of the winch or the tested lifting capacity of the boom assembly;
 9. Tow a vehicle using a tow sling, tow plate, or tow bar unless appropriate load securement devices are attached;
 10. Transport a vehicle by flatbed or truck, truck-tractor, or semi-trailer unless the vehicle is secured with a minimum of a four-point tie-down, not including the winch;
 11. Tow a vehicle with a wheel-lift, under-lift, tow plate, tow bar, or tow sling unless two safety chains are attached by crossing the chains with one end of each chain attached to a major structural member of the tow truck and the other end attached to a major structural member of the towed vehicle, with no attachments to the bumpers;
 12. Tow a vehicle using a tow plate, tow bar, tow sling, wheel-lift, or under-lift unless a portable lamp is affixed to the rear of the rear-most towed vehicle, in plain view, and when activated, visible to traffic traveling in the same direction;
 13. Activate warning light assembly except at the scene of service, or when transporting a vehicle that presents a hazard from a collision scene;
 14. Use any vehicle towed or article stored in the towed vehicle, unless it is the property of the tow truck company or tow truck agent;
 15. Operate a tow truck that exceeds the manufacturer's G.V.W.R. without a load or the manufacturer's rated capacity for the boom or bed assembly;
 16. Operate a tow truck that is equipped with a tow plate, tow bar, or tow sling unless the tow plate, tow bar, or tow sling has a manufacturer weight rating that exceeds any load carried on it; or
 17. Refuse to make prompt restitution for any damage for which the tow truck company is legally liable.
- D.** The Department may suspend a permit decal for failure to comply with these standards.