

ARTICLE 38-04
MOTOR CARRIER SAFETY REGULATIONS

38-04-01 Motor Carrier Safety Regulations – General

CHAPTER 38-04-01
MOTOR CARRIER SAFETY REGULATIONS - GENERAL

Section

38-04-01-01 Regulatory Intent

38-04-01-02 Adoption of Regulations 38-04-01-03 Amendments

38-04-01-01. Regulatory intent.

1.The motor carrier safety regulations adopted in this chapter are designed to improve the safety and welfare of the general public by providing a framework of safe operating practices for motor carriers.

2.These regulations are adopted without substantial modification so as to provide for the greatest flexibility and uniformity in both interstate and intrastate commerce.

3.These regulations are binding upon all motor carriers and their employees while operating within or through the state of North Dakota and shall be enforced by the North Dakota highway patrol.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

Section 38-04-01-02 is amended as follows:

38-04-01-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations, including amendments are adopted by reference:

1. Part 382 - Controlled Substances and Alcohol Use and Testing.
2. Part 385 – Subpart A – General
3. Part 385 – Subpart B – Safety Monitoring System for Mexico-Domiciled Carriers
- ~~2-4.~~ Part 385 - Subpart C - Certification of Safety Auditors, Safety Investigators, and Safety Inspectors.
- ~~3-5.~~ Part 385 - Subpart D - New Entrant Safety Assurance Program.
6. Part 385 - Subpart E - Hazardous Materials Safety Permits.

- ~~7.~~ Part 386 – Subpart F – Injunctions and Imminent Hazards
- ~~4-8.~~ Part 386 – Subpart G - Penalties
- ~~5-9.~~ Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
- ~~6-10.~~ Part 390 - Federal Motor Carrier Safety Regulations: General.
- ~~7-11.~~ Part 391 - Qualifications of Drivers.
- ~~8-12.~~ Part 392 - Driving of Motor Vehicles.
- ~~9-13.~~ Part 393 - Parts and Accessories Necessary for Safe Operation.
- ~~10-14.~~ Part 395 - Hours of Service of Drivers.
- ~~11-15.~~ Part 396 - Inspection, Repair and Maintenance.
- ~~12-16.~~ Part 397 - Transportation of Hazardous Materials; Driving.

Intrastate commercial motor vehicles with a gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating of twenty-six thousand pounds [11793.52 kilograms] or less are exempt from all federal motor carrier safety regulations unless the vehicle is used to transport hazardous materials requiring a placard, the vehicle is designed to transport more than 8 passengers (including the driver) for compensation or unless the vehicle is designed to transport more than fifteen people, including the driver not for compensation.

History: Effective October 1, 1983; amended effective February 1, 1999; February 1, 2000; April 1, 2008; July 1, 2013.

General Authority: NDCC 28-32-02, 39-32-02

Law Implemented: NDCC 39-21-46

38-04-01-03. Amendments.

These regulations include such amendments as may be promulgated by the United States department of transportation.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

CHAPTER 38-06-02 ADOPTION OF REGULATIONS

Section	
38-06-02-01	General Rules
38-06-02-02	Flagging, Sign, Lighting, and Mirror Requirements
38-06-02-03	Escort Requirements
38-06-02-04	Routing of Movements
38-06-02-05	Insurance Requirements
38-06-02-06	Size and Weight Limitations
38-06-02-07	Travel Restrictions

38-06-02-01. General rules.

1. The North Dakota highway patrol may issue annual permits for the movement of overwidth or overlength vehicles and loads and single trip permits for the movement of oversize or overweight, or both, vehicles and loads. Unless otherwise exempted by the superintendent, permits will not be issued for loads that can be reasonably made to conform to legal limits.
2. All permits must be in possession of the permittee prior to starting movement unless prior approval is obtained from the highway patrol.

History: Effective January 1, 1988; amended effective January 1, 1992; April 1, 2008; January 1, 2016; July 1, 2019.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-02. Flagging, sign, lighting, and mirror requirements.

1. All overdimensional vehicles and loads must have minimum eighteen-inch by eighteen-inch [45.72-centimeters by 45.72-centimeters] red or bright orange flags displayed on the traffic sides front and rear.
2. When the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length. when a movement is overwidth. or when the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length and the movement is overwide, there must be a minimum twelve-inch by sixty-inch [304.8-millimeters by 1524-millimeters] oversize load sign on the front or roofline of the towing vehicle, and the rear of the vehicle/load. The lettering must be black on yellow background. Letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. When the movement is overlength only, exceeding seventy-five feet [22.86 meters] in overall length. a long load sign that is a minimum twelve inches by sixty inches [304.8 millimeters by 1524 millimeters] in size may be used in lieu of the oversize load sign. The lettering must be black on yellow background. The letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. The sign must be covered or removed when the movement is not overdimensional.
3. A motor vehicle must have two outside mirrors, one on each side, to reflect to the driver a rear view of the roadway for a distance of no less than two hundred feet [60.96 meters].
4. Between a half hour after sunset and a half hour before sunrise, a permitted overwidth vehicle or load must be equipped with the society of automotive engineers-approved class 1 lights and reflectors, in addition to those required in North Dakota Century Code chapter 39-21 and Code of Federal Regulations, title 49, part 393.

- a. One rotating or two flashing amber lights shall be mounted above the cab and visible from the front and rear for a distance not less than five hundred feet [152.4 meters], under clear atmospheric conditions at night. If the lights on the cab are not visible to the rear, additional flashing amber lights are required at the rear.
- b. Clearance lights must be visible from the front, rear, and side, marking the outermost portion of the vehicle and load which extends beyond eight feet six inches [2.5908 meters].
- c. Vehicles must be capable of traveling at the posted highway speed unless otherwise noted on the permit.

History: Effective January 1, 1988; amended effective February 1, 1999; April 1, 2008; July 1, 2013; January 1, 2016.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-03. Escort requirements.

1. All movements exceeding fourteen feet six inches [4.42 meters] in overall width but not exceeding sixteen feet [4.87 meters] in overall width shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] on two-lane highways. In lieu of the pilot car requirement, the overwidth vehicle itself, or vehicle towing or hauling an overwidth load, may be equipped with a lighted rotating or flashing amber light or lights that are visible from front and rear for a minimum five hundred feet [152.4 meters]. On four-lane divided highways there are no pilot car requirements for movements of this size.
2. All movements exceeding sixteen feet [4.88 meters] in overall width shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] and shall have one pilot car follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] on two-lane highways. On four-lane divided highways one pilot car shall follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].
3. All movements exceeding one hundred twenty feet [36.57 meters] in overall length shall have one pilot car follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].
4. All movements exceeding eighteen feet [5.49 meters] in overall height shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].
5. The North Dakota department of transportation chief engineer, bridge engineer, district engineers, or highway patrol may require pilot cars for movements that are overweight.

History: Effective January 1, 1988; amended effective January 1, 1992.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-04. Routing of movements.

Permit issuing personnel may designate routes of travel where adequate width or height for safe traffic movement cannot be provided, or when restricted by maps as provided by North Dakota department of transportation engineers.

History: Effective January 1, 1988; amended effective January 1, 1992.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-05. Insurance requirements.

1. When towing or hauling oversize mobile home or modular units, the towing vehicle must have minimum insurance coverage of one hundred thousand dollars bodily injury liability for one person, three hundred thousand dollars bodily injury liability for one accident, and fifty thousand dollars property damage liability.
2. When requesting permits for movements exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight, or when otherwise required by the highway patrol or department of transportation engineers, the applicant must provide written verification of liability and property damage insurance coverage.
3. An insurance bond in the amount determined by the North Dakota department of transportation may be required for load or vehicle movements of excessive size or weight, showing the North Dakota department of transportation as an additional insured. Excessive size and weight shall be determined on a case-by-case basis by the North Dakota department of transportation.

History: Effective January 1, 1988; amended effective January 1, 1992; April 1, 2008.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-06. Size and weight limitations.

Limitations for single trip permits for overweight movements must be as determined by department of transportation engineers.

History: Effective January 1, 1988; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-07. Travel restrictions.

1. Permits may not be issued for overdimensional movements between one-half hour after sunset and one-half hour before sunrise unless otherwise authorized by the superintendent.
2. Except as authorized in this section, single trip permits for overwidth exceeding sixteen feet [4.88 meters] may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. No overwidth permit exceeding sixteen feet [4.88 meters] will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
3. The superintendent may authorize a single trip permit for weekends or holidays.
4. Permits do not authorize movements when inclement weather prevails, highways are slippery, or when visibility is ~~per~~ 1/2 mile or less.
5. Permits do not authorize travel on shoulders of road.
6. A single trip permit is required for each movement that is overdimensional or overweight. An annual permit for overwidth or overlength vehicle and load movements can be used in lieu of the single trip permit issued for overwidth or overlength movements.

7. A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

History: Effective January 1, 1988; amended effective August 1, 1993; February 1, 1999; April 1, 2008; July 1, 2013; January 1, 2016; July 1, 2019.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

**CHAPTER 38-06-03
PERMIT FEES**

Section 38-06-03-01 is amended as follows:

Section
38-06-03-01 Permit Fees

38-06-03-01. Permit fees.

The following fees are in addition to those found in North Dakota Century Code section 39-12-02:

- ~~1. The single trip permit fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36287 kilograms] on the interstate highway system is ten dollars.~~
2. The fee for a seasonal permit is fifty dollars per year. The seasonal permit is issued to vehicles referenced in subdivision d of subsection 1 of North Dakota Century Code section 39-12-04.
3. There is a graduated fee schedule for overweight single trip movements exceeding one hundred fifty thousand pounds [68035 kilograms] gross vehicle weight.

Gross Vehicle Weight	Permit Fee
150,001 - 160,000 lbs. [68039-72574 kilograms]	\$30
160,001 - 170,000 lbs. [72575-77110 kilograms]	\$40
170,001 - 180,000 lbs. [77111-81646 kilograms]	\$50
180,001 - 190,000 lbs. [81647-86182 kilograms]	\$60
190,001 lbs. and over [86183 kilograms and over]	\$70

4. There is an additional ton/mile [907 kilogram/1.6 kilometers] fee of \$.05 per ton per mile on all those movements that exceed two hundred thousand pounds [90718 kilograms] gross vehicle weight. The ton/mile [907 kilogram/1.6 kilometers] fee is only assessed upon that portion of gross vehicle weight exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight.
5. The superintendent shall assess a fee of fifty cents per mile [1.6 kilometers] or fifty dollars per hour, or both, per trooper, on those movements of extraordinary size or weight when an escort by the highway patrol is required or when the highway patrol is requested to weigh a vehicle with portable scales.
6. The fee for an equipment approval certificate is fifteen dollars.
7. The ton-mile [907 kilogram-1.6 kilometers] fee for a vehicle or load movement that exceeds the weight limits on highways during the spring thaw or on highways with load limits year-round is as follows:
 - a. One dollar per ton-mile [907 kilogram-1.6 kilometers] when exceeding axle weight limits.
 - b. The fees for vehicle or vehicle combinations hauling a load and in excess of the gross vehicle weight limit:
 - (1) One dollar per mile [1.6 kilometers] when the gross vehicle weight exceeds one hundred five thousand five hundred pounds [47853 kilograms] and travel is on highways restricted by legal weight or eight-ton [7257 kilograms] and seven-ton [6350 kilograms] designated state highways.

- (a) Vehicles authorized by the director of the department of transportation to haul construction equipment to state highway construction projects are exempt from one dollar per mile [1.6 kilometers] fee.
 - (b) The total number of single trip permits for a state highway construction project that may be waived from the one dollar per mile [1.6 kilometers] fee may not exceed ten single trip permits.
- (2) Five dollars per ton-mile [907 kilograms-1.6 kilometers] when the gross vehicle weight exceeds:
- (a) One hundred thirty thousand pounds [58967 kilograms] on highways restricted by legal weight.
 - (b) One hundred twenty thousand pounds [54431 kilograms] on eight-ton [7257 kilograms] highways.
 - (c) One hundred ten thousand pounds [49895 kilograms] on seven-ton [6350 kilograms] highways.
 - (d) Eighty thousand pounds [36287 kilograms] on six-ton [5443 kilograms] highways.
- (3) The five dollar per ton-mile [907 kilograms-1.6 kilometers] fee for self-propelled special mobile equipment is assessed when the gross vehicle weight exceeds:
- (a) One hundred five thousand five hundred pounds [47853 kilograms] on highways restricted by legal weight.
 - (b) One hundred five thousand five hundred pounds [47853 kilograms] on eight-ton [7257 kilograms] highways.
 - (c) One hundred five thousand five hundred pounds [47853 kilograms] on seven-ton [6350 kilograms] highways.
 - (d) Eighty thousand pounds [36287 kilograms] on six-ton [5443 kilograms] highways.
- c. Loads permitted by the one-hundred-twenty-nine-thousand-pound [58513-kilogram] primary network permit are exempt from fees on highways restricted to legal weight.
8. The fee for a weight increase on a work-over service rig is nine hundred ninety dollars. The fee shall be assessed on a work-over service rig that exceeds six hundred seventy pounds [303 kilograms] per inch [2.54 centimeters] of tire width on a single or tandem axle, exceeds sixty thousand pounds [27215 kilograms] on a triple axle, and sixty-eight thousand pounds [30844 kilograms] on a four-axle group.
- a. The weight increase is valid for a ~~calendar year~~ 365 days.
 - b. The weight increase can only be assessed on model year 2010 work-over service rigs and older.
9. All permit fees must be deposited into the state highway distribution fund.

History: Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993; February 1, 1999; February 1, 2000; April 1, 2008, July 1, 2013; January 1, 2016; July 1, 2019.

General Authority: NDCC 39-12-02, 39-12-03, 39-12-04, 39-12-05.3

Law Implemented: NDCC 39-12-02, 39-12-04, 39-12-05.3

**ARTICLE 38-09
SAFETY STANDARDS FOR PASSENGER CONTRACT CARRIERS**

Chapter
38-09-01 — Safety Standards for Passenger Contract Carriers

**CHAPTER 38-09-01
SAFETY STANDARDS FOR PASSENGER CONTRACT CARRIERS**

Section
38-09-01-01 — General
38-09-01-02 — Driver Qualifications
38-09-01-03 — Annual Motor Vehicle Inspection
38-09-01-04 — Maintenance and Repair Program
38-09-01-05 — Hours of Service
38-09-01-06 — Tests Required
38-09-01-07 — Retention of Records
38-09-01-08 — Insurance

38-09-01-01. General.

All passenger contract carriers transporting fewer than fifteen passengers, subject to North Dakota Century Code section 8-02-08, must register with the North Dakota highway patrol before October 1, 1999, or upon engaging in the passenger contract carrier business. Said carriers shall comply with the minimum safety standards established by this chapter.

History: Effective February 1, 2000.

General Authority: NDCC 8-02-08

Law Implemented: NDCC 8-02-08

38-09-01-02. Driver qualifications.

Each contract carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification packet may be combined with the driver's personnel file.

1. The qualification file for a driver must include:
 - a. A certificate of a physical examination conducted every three years which certifies the driver's physical ability to drive a commercial motor vehicle;
 - b. Documentation relating to an annual review of the driver's driving record;
 - c. Lists or certificates relating to violations of motor vehicle laws and ordinances;
 - d. Any other matters that relate to the driver's qualification or ability to drive a commercial vehicle;
 - e. The driver's application for employment;
 - f. Any responses from past employers, if required by the employer; and
 - g. A certificate of the driver's road test or a copy of the valid driver's license.
2. No driver of a contract carrier may permit or require any driver to drive if said driver has committed two or more serious traffic violations within three years. A serious traffic violation includes:
 - a. Excessive speeding, fifteen miles per hour or more above the posted limit;

- b. ~~Driving under the influence of alcohol or drugs;~~
- c. ~~Reckless driving;~~
- d. ~~Improper or erratic lane changes;~~
- e. ~~Following a vehicle too closely; or~~
- f. ~~Traffic offenses committed in connection with a traffic crash.~~

History: Effective February 1, 2000.

General Authority: ~~NDCC 8-02-08~~

Law Implemented: ~~NDCC 8-02-08~~

~~38-09-01-03. Annual motor vehicle inspection.~~

- 1. ~~Each contract carrier shall inspect or cause to be inspected each motor vehicle subject to its control.~~
- 2. ~~A contract carrier shall not use a commercial motor vehicle unless each component identified on the inspection form (DOT annual or derivative thereof) (49 CFR part 396.21a) has passed an inspection at least once during the preceding twelve months.~~
- 3. ~~It shall be the carrier's responsibility to ensure that individuals performing the annual inspection are qualified as prescribed in 49 CFR part 396.19.~~
- 4. ~~Driver vehicle inspection reports.~~
 - a. ~~Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:~~
 - (1) ~~Service brakes;~~
 - (2) ~~Parking (hand) brake;~~
 - (3) ~~Steering mechanism;~~
 - (4) ~~Lighting devices and reflectors;~~
 - (5) ~~Tires;~~
 - (6) ~~Horn;~~
 - (7) ~~Windshield wipers;~~
 - (8) ~~Rear vision mirrors;~~
 - (9) ~~Wheels and rims; and~~
 - (10) ~~Emergency equipment.~~
 - b. ~~The report shall identify the motor vehicle and list any defect or deficiency discovered by or reported to the driver which would affect safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the vehicle inspection report. On two driver operations, only one driver needs to sign the report, provided both drivers agree as to the defects or deficiencies. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.~~

- c. ~~Prior to operating a motor vehicle, carriers or their agents shall effect repair of any items listed on the vehicle inspection report that would be likely to affect the safety of operation of the vehicle.~~
 - (1) ~~Contract carriers or their agents shall certify on the report which lists any defect or deficiency that the defect or deficiency has been corrected or that correction is unnecessary before the vehicle is again dispatched.~~
 - (2) ~~Contract carriers shall retain the original copy of each vehicle inspection report and the certification of repairs for at least six months from the date the report was prepared.~~

History: Effective February 1, 2000.

General Authority: NDCC 8-02-08

Law Implemented: NDCC 8-02-08

38-09-01-04. Maintenance and repair program.

- 1. ~~Every contract carrier and its officers, drivers, agents, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply with and be knowledgeable of the carrier's maintenance program.~~
- 2. ~~Every contract carrier shall systematically inspect (daily or weekly), repair, and maintain or cause to be inspected, repaired, or maintained all motor vehicles under its control.~~
 - a. ~~Parts and accessories must be in safe and proper operating condition at all times and must be clean.~~
 - b. ~~Each vehicle used to provide service must have tires with sufficient tread and a fully inflated spare tire.~~
 - c. ~~There must be a secured location for personal baggage, including proper restraints.~~
 - d. ~~Each vehicle must have fully operational seatbelts for all persons in the vehicle.~~
 - e. ~~Each vehicle must have traction devices, studs, or chains when weather requires.~~
 - f. ~~Each vehicle must be equipped with a properly working heater and air conditioner.~~
 - g. ~~Each vehicle must have a fully stocked emergency road kit containing no less than a blanket, road inflator aerosol can, flares or reflective triangles, jumper cables, and a fire extinguisher.~~
 - h. ~~The contract carriers shall maintain or cause to be maintained the following records for each vehicle:~~
 - (1) ~~An identification number of each vehicle including the company number if so marked, serial number, make, and year. If the vehicle is not owned by said carrier, the record must identify the name of the person furnishing the vehicle.~~
 - (2) ~~A means or schedule to indicate the nature and due date of various inspections and maintenance operations (tires, brakes, lubrication, etc.) to be performed.~~
 - (3) ~~A record of inspection, repairs, and maintenance indicating the date and nature.~~
 - i. ~~The records required by this section shall be retained by the carrier at the carrier's place of business for a period of one year and for six months after the vehicle leaves the carrier's control.~~

- ~~j.—A motor vehicle shall not be operated in such a condition as likely to cause an accident or a breakdown of the vehicle.~~

History: Effective February 1, 2000.

General Authority: NDCC 8-02-08

Law Implemented: NDCC 8-02-08

~~38-09-01-05. Hours of service.~~

- ~~1.—A contract carrier may not permit or require any driver to drive or remain on duty, and the driver may not drive:
 - ~~a.—More than ten hours following eight consecutive hours off duty;~~
 - ~~b.—If the driver's combined on duty and drive time hours equal fifteen hours since last obtaining eight consecutive hours off duty time; or~~
 - ~~c.—If the total number of hours of on duty time and drive time exceed seventy hours in any period of eight consecutive days.~~~~
- ~~2.—The person who employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.~~
- ~~3.—Following twenty four consecutive hours off, a driver begins a new seven consecutive day period and on duty time is reset to zero.~~
- ~~4.—The following rules will apply in determining the time a transport vehicle driver is on or off duty:
 - ~~a.—Time on duty begins when the transport vehicle driver reports for duty and ends when the transport vehicle driver is finally released from duty.~~
 - ~~b.—Time when the transport vehicle driver is engaged in or connected with the movement of a transport motor vehicle is time on duty even when such vehicle is not actually transporting passengers.~~
 - ~~c.—Time spent performing any other service for the contract carrier or an associated business during a twenty four hour period in which the transport vehicle driver is engaged in or connected with the movement of a transport motor vehicle is time on duty.~~~~
- ~~5.—A transport vehicle driver who encounters an emergency and cannot, because of that emergency, safely complete a transportation assignment within the ten-hour maximum driving time permitted by this rule may drive and be permitted or required to drive a transport motor vehicle for not more than two additional hours in order to complete that transportation assignment or to reach a place offering safety for the occupants of the transport motor vehicle and security for the transport motor vehicle if such transportation assignment reasonably could have been completed within such ten-hour period absent the emergency.~~
- ~~6.—No later than January thirty first of each year, a contract carrier shall inform each of its transport vehicle drivers in writing:
 - ~~a.—That all time spent performing aggregate duty for one or more contract carriers and one or more independent contractors counts as time on duty under this section;~~
 - ~~b.—About the transport vehicle driver's responsibilities under subsection 7; and~~
 - ~~c.—About the penalties applicable for failure to comply with subsection 7.~~~~

- ~~7. A dually employed transport vehicle driver shall:
 - ~~a. Inform each of the driver's contract employers in writing within five days after entering into an employment relationship with an additional contract carrier; and~~
 - ~~b. Ensure that each of the driver's contract carrier employers is kept informed about the transport vehicle driver's work schedule with each of the other employing contract carriers.~~~~
- ~~8. A contract carrier receiving written notification of dual employment shall retain a copy of the notification for a period of two years after the termination of such dual employment status. A copy shall be made available to representatives of the state for inspection and copying during normal business hours at the contract carrier's system headquarters and at such subsystem headquarters as may be required by the state.~~

History: Effective February 1, 2000.

General Authority: NDCC 8-02-08

Law Implemented: NDCC 8-02-08

~~38-09-01-06. Tests required.~~

- ~~1. Preemployment testing. Prior to the first time a driver performs any duty for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in subsection 2 or 3. No employer shall allow a driver, whom the employer intends to hire or use, to perform a duty function unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04 and has received a controlled substances test result from the medical review officer (as defined in section 40.3 of the federal motor carrier safety regulations) indicating a verified negative test result.~~
- ~~2. Exception for preemployment alcohol testing. An employer is not required to administer an alcohol test required by subsection 1 if the driver has undergone an alcohol test required by this section within the previous six months, with a result indicating an alcohol concentration less than 0.04.~~
- ~~3. Exception for preemployment controlled substances testing. An employer is not required to administer a controlled substances test required by subsection 1 if:
 - ~~a. The driver has participated in a controlled substances testing program that meets the requirements of this section within the previous thirty days;~~
 - ~~b. While participating in that program, either:
 - ~~(1) Was tested for controlled substances within six months from the date of application with the employer; or~~
 - ~~(2) Participated in the random controlled substances testing program for the previous twelve months from the date of application with the employer; and~~~~
 - ~~c. The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this chapter or the controlled substances use rule of another agency within the previous six months.~~~~
- ~~4. An employer who exercises the exception in either subsection 2 or subsection 3 shall contact the alcohol or controlled substances testing program, or both, in which the driver participates or participated and shall obtain and retain from the testing program the following information:~~

- a. ~~Name and address of the program.~~
 - b. ~~Verification that the driver participates or participated in the program.~~
 - c. ~~Verification that the program conforms to part 40 of the federal motor carrier safety regulations.~~
 - d. ~~Verification that the driver is qualified under the rules of this chapter, including that the driver has not refused to be tested for controlled substances.~~
 - e. ~~The date the driver was last tested for alcohol or controlled substances.~~
 - f. ~~The results of any tests taken within the previous six months and any other violations of this chapter.~~
5. ~~An employer who uses, but does not employ, a driver more than once a year to operate contract carrier's vehicles must obtain the information in subsection 4 at least once every six months. The records prepared under this section shall be maintained in accordance with section 382.401 of the federal motor carrier safety regulations. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this section and part 40 of the federal motor carrier safety regulations, the employer shall conduct a preemployment test for alcohol or controlled substances, or both.~~
6. ~~Postaccident testing. As soon as practicable following an occurrence involving a contract carrier vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:~~
- a. ~~Who was performing a duty function with respect to the vehicle, if the accident involved the loss of human life; or~~
 - b. ~~Who receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved:~~
 - (1) ~~Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or~~
 - (2) ~~One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.~~
 - c. ~~This table notes when a postaccident test is required to be conducted by subdivisions a and b.~~

Type of Accident Involved	Citation Issued to the Contract Driver	Test Must Be Performed by Employer
Human Fatality	Yes	Yes
	No	Yes
Bodily Injury With Immediate Medical Treatment Away From the Scene	Yes	Yes
	No	No
Disabling Damage to	Yes	Yes

~~Any Motor Vehicle _____ No _____ No
Requiring Tow Away~~

~~d. Alcohol tests. If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the highway patrol upon request of the superintendent.~~

~~(1) Type of test (reasonable suspicion or postaccident);~~

~~(2) Triggering event including date, time, and location;~~

~~(3) Reason test could not be completed within eight hours;~~

~~(4) If blood alcohol testing could have been completed with eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and~~

~~(5) Records of alcohol tests that could not be completed in eight hours shall be submitted to:~~

~~North Dakota Highway Patrol
600 East Boulevard Avenue, Dept. 504
Bismarck, ND 58505-0240~~

~~e. Controlled substance tests. If a test required by this section is not administered within thirty two hours following the accident, the employer shall cease attempts to administer a controlled substances test and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the highway patrol upon request of the superintendent.~~

~~f. A driver who is subject to postaccident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.~~

~~g. An employer shall provide drivers with necessary postaccident information, procedures, and instructions, prior to the driver operating a motor vehicle, so that drivers will be able to comply with the requirements of this section.~~

~~h. The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local alcohol testing requirements, and that the results of the tests are obtained by the employer.~~

~~i. The results of a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.~~

~~j. Exception. This section does not apply to:~~

- ~~(1) An occurrence involving only boarding or alighting from a stationary motor vehicle;~~
- ~~(2) An occurrence involving only the loading or unloading of passengers; or~~
- ~~(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle, as defined in this chapter, by an employer unless the motor vehicle is transporting passengers for hire.~~

~~7. Random testing. Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.~~

- ~~a. The minimum annual percentage rate for random alcohol testing shall be twenty five percent of the average number of driver positions.~~
- ~~b. The minimum annual percentage rate of random controlled substances testing shall be fifty percent of the average number of driver positions.~~
- ~~c. The superintendent's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry.~~
- ~~d. The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the highway patrol superintendent. If the employer conducts random testing for alcohol or controlled substances, or both, through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol or controlled substances, or both, testing at the same minimum annual percentage rate under this section or any federal department of transportation alcohol or controlled substances random testing rule.~~
- ~~e. Each employer shall ensure that random alcohol and controlled substances tests conducted under this section are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.~~
- ~~f. Each employer shall require that each driver who is notified of selection for random alcohol or controlled substances, or both, testing proceeds to the test site immediately. However, if the driver is driving a contract carrier vehicle at the time of notification, the employer shall ensure that the driver proceeds to the testing site as soon as possible.~~
- ~~g. A driver shall only be tested for alcohol while the driver is performing safety sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.~~

~~8. Reasonable suspicion testing.~~

- ~~a. An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the driver.~~
- ~~b. An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions~~

~~concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.~~

~~e. Alcohol testing is authorized by this section only if the observations required by this section are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.~~

~~9. A laboratory certified pursuant to the federal workplace drug testing program by the United States department of health and human services shall perform all drug tests conducted under this section.~~

History: Effective February 1, 2000.

General Authority: NDCC 8-02-08

Law Implemented: NDCC 8-02-08

38-09-01-07. Retention of records.

~~Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.~~

~~1. Each employer shall maintain the records in accordance with the following schedule:~~

~~a. The following records shall be maintained for a minimum of five years:~~

~~(1) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater;~~

~~(2) Records of driver-verified positive controlled substances test results;~~

~~(3) Documentation of refusals to take required alcohol or controlled substances, or both, tests;~~

~~(4) Driver evaluation and referrals;~~

~~(5) Calibration documentation;~~

~~(6) Records related to the administration of the alcohol and controlled substances testing programs; and~~

~~(7) A copy of each annual calendar year summary required by section 382.403 of the federal motor carrier safety regulations.~~

~~b. Records related to the alcohol and controlled substances collection process, except calibration of evidential breath testing devices, shall be maintained for a minimum of two years.~~

~~c. Records of negative and canceled controlled substances test results, as defined in part 40 of the federal motor carrier safety regulations, and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.~~

- ~~d. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.~~
- ~~2. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this chapter. If the record is required to be prepared, it must be maintained.~~
 - ~~a. Records related to the collection process:
 - ~~(1) Collection logbooks, if used;~~
 - ~~(2) Documents relating to the random selection process;~~
 - ~~(3) Calibration documentation for evidential breath testing devices;~~
 - ~~(4) Documentation of breath alcohol technician training;~~
 - ~~(5) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;~~
 - ~~(6) Documents generated in connection with decisions on postaccident tests;~~
 - ~~(7) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and~~
 - ~~(8) Consolidated annual calendar year summaries as required by section 382.403 of the federal motor carrier safety regulations.~~~~
 - ~~b. Records related to a driver's test results:
 - ~~(1) The employer's copy of the alcohol test form, including the results of the test;~~
 - ~~(2) The employer's copy of the controlled substances test chain of custody and control form;~~
 - ~~(3) Documents sent by the medical review officer to the employer;~~
 - ~~(4) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this chapter;~~
 - ~~(5) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this chapter; and~~
 - ~~(6) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results.~~~~
 - ~~c. Records concerning a driver's compliance with recommendations of the substance abuse professional.~~
 - ~~d. Records related to education and training:
 - ~~(1) Materials on alcohol misuse and controlled substances use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;~~
 - ~~(2) Documentation of compliance with the requirements of section 382.601 of the federal motor carrier safety regulations, including the driver's signed receipt of educational materials; and~~~~

- ~~(3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol or controlled substances, or both, testing based on reasonable suspicion.~~
- ~~e. Administrative records related to alcohol and controlled substances testing:
 - ~~(1) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers; and~~
 - ~~(2) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program.~~~~
- ~~3. All records required by this section shall be maintained as required and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the highway patrol.~~
- ~~4. Reporting of results in a management information system.
 - ~~a. An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this chapter during the previous calendar year, when requested by the superintendent.~~
 - ~~b. If an employer is notified during the month of January of a request by the superintendent to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the highway patrol by March fifteenth of that year. The employer shall ensure that the annual summary report is accurate and received by March fifteenth at the location that the highway patrol specifies in its request. The report shall be in the form and manner prescribed by the highway patrol in its request. When the report is submitted to the highway patrol by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.~~
 - ~~c. Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of this part shall include the following informational elements:
 - ~~(1) Number of drivers subject to testing;~~
 - ~~(2) Number of urine specimens collected by type of test (e.g., preemployment, random, reasonable suspicion, or postaccident);~~
 - ~~(3) Number of positives verified by a medical review officer by type of test and type of controlled substance;~~
 - ~~(4) Number of negative controlled substance tests verified by a medical review officer by type of test;~~
 - ~~(5) Number of persons denied a position as a driver following a preemployment verified positive controlled substances test or a preemployment alcohol test, or both, that indicates an alcohol concentration of 0.04 or greater;~~
 - ~~(6) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;~~~~~~

- ~~(7) Number of drivers who refused to submit to an alcohol or controlled substances test required under this chapter;~~
 - ~~(8) Number of supervisors who have received required alcohol training during the reporting period;~~
 - ~~(9) Number of supervisors who have received required controlled substances training during the reporting period;~~
 - ~~(10) Number of screening alcohol tests by type of test;~~
 - ~~(11) Number of confirmation alcohol tests by type of test;~~
 - ~~(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test;~~
 - ~~(13) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater by type of test;~~
 - ~~(14) Number of drivers who were returned to duty having complied with the recommendations of a substance abuse professional, in this reporting period, who previously had a verified positive controlled substance test result or engaged in prohibited alcohol misuse under the provisions of this chapter;~~
 - ~~(15) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and~~
 - ~~(16) Number of drivers who were found to have violated any nontesting prohibitions of this chapter and any action taken in response to the violation.~~
- ~~d. A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.~~

~~5. Access to facilities and records.~~

- ~~a. Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained.~~
- ~~b. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to the driver's alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.~~
- ~~c. Each employer shall permit access to all facilities utilized in complying with the requirements of this section to any state or local officials with regulatory authority over the employer or any of its drivers.~~
- ~~d. Each employer shall make available copies of all results for employer alcohol or controlled substances, or both, testing conducted under this section and any other information pertaining to the employer's alcohol misuse or controlled substances use prevention, or both, program, when requested by any state or local officials with regulatory authority over the employer or any of its drivers.~~

- e. ~~When requested by the highway patrol superintendent as part of an accident investigation, employers shall disclose information related to the employer's administration of a postaccident alcohol or controlled substances, or both, test administered following the accident under investigation.~~
- f. ~~Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.~~
- g. ~~An employer may disclose information required to be maintained under this section pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding arising from the results of an alcohol or controlled substances, or both, test administered under this chapter, or from the employer's determination that the driver engaged in conduct prohibited by this chapter, including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.~~
- h. ~~An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.~~

~~**History:** Effective February 1, 2000.~~

~~**General Authority:** NDCC 8-02-08~~

~~**Law Implemented:** NDCC 8-02-08~~

~~**38-09-01-08. Insurance.**~~

~~All contract carriers shall, at their own expense, obtain and maintain in force required insurance for their type of operation as required by law.~~

~~**History:** Effective February 1, 2000.~~

~~**General Authority:** NDCC 8-02-08~~

~~**Law Implemented:** NDCC 8-02-08~~