

June 3, 2021

Ms. Vonette Richter
Assistant Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Ms. Richter:

The Notice of Intent to **Amend** 38.04.01.02; **Amend** 38.06.02.07; **Amend** 38.06.03.01; and **Repeal** 38.09 Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,



Colonel Brandon Solberg
Superintendent

Enclosures

FULL NOTICE OF INTENT TO **AMEND** ADMINISTRATIVE RULES

TAKE NOTICE that the **North Dakota Highway Patrol** will hold a public hearing to address proposed **amendments to N.D. Admin. Code title 38, article 04, chapter 01, section 02** and at 2:00 PM, CDT, **Tuesday, July 6**, at the NDHP conference room, state capitol building, **600 E. Boulevard Ave, Bismarck ND.**

The purpose of the proposed amendments is to comply with the Federal Motor Carrier Safety Administration's Motor Carrier Safety Assistance Program grant, additions will result in renumbering.

38-04-01-02. Adoption of regulations Add 2. Part 385 – Subpart A – General. The addition is to allow for enforcement of federal out of service orders for unsatisfactory and unfit motor carriers.

38-04-01-02. Adoption of regulations Add 3. Part 385 – Subpart B – Safety Monitoring System for Mexico-Domiciled Carriers. The addition is to allow for enforcement of federal out of service orders related to Mexican Carriers.

38-04-01-02. Adoption of regulations Add 7. Part 386 – Subpart F – Injunctions and Imminent Hazards. The addition is to allow for enforcement of federal out of service orders related to motor carriers who have been identified as Imminent Hazards.

38-04-01-02. Adoption of regulations Add 8. Part 386 – Subpart G – Penalties. The addition is to allow for enforcement of federal out of service orders for failure to pay fines.

38-04-01-02. Explanatory text Adding clarifying language. Following the word placard in the definition of intrastate commercial motor vehicle, the addition of "the vehicle is designed to transport more than 8 passengers (including the driver) for compensation". Also add the phrase at the end following the word driver "not for compensation".

The proposed amendments address:

38-04-01-02. Adoption of regulations Add 2. Part 385 – Subpart A – General. To ensure NDHP has the authority to place a motor carrier out of service when the carrier is found operating on North Dakota roads after being placed out of service, under 49 CFR 385.13 (a), by FMCSA for being unsatisfactory or unfit. This will allow compliance with the FMCSA MCSAP grant.

38-04-01-02. Adoption of regulations Add 3. Part 385 – Subpart B – Safety Monitoring System for Mexico-Domiciled Carriers. To ensure NDHP has the authority to place a Mexican-domiciled motor carrier out of service when the carrier is found operating on North Dakota roads after being placed out of service, under 49 CFR 385.105(b) for failure to respond or 385.111(a) for suspension and revocation of Mexico-domiciled carrier registration, by FMCSA. This will allow compliance with FMCSA MCSAP grant.

38-04-01-02. Adoption of regulations Add 7. Part 386 – Subpart F – Injunctions and Imminent Hazards. To ensure NDHP has the authority to place a motor carrier out of service when the carrier is found operating on North Dakota roads after being placed out of service, under 49 CFR 386.72, by FMCSA for being an imminent hazard. This will allow compliance with FMCSA MCSAP grant.

38-04-01-02. Adoption of regulations Add 8. Part 386 – Subpart G – Penalties. To ensure NDHP has the authority to place a motor carrier out of service when the carrier is found operating on North Dakota roads after being placed out of service, under 49 CFR 386.13 (a)(1), by FMCSA for failing to pay civil penalties or abide by payment plan where operation in interstate commerce is prohibited. This will allow compliance with FMCSA MCSAP grant.

38-04-01-02. Explanatory text Senate Bill 2097 was passed during the 2021 legislative session and added the same verbiage to subdivision b of subsection 1 of section 39-32-02. The addition reflects the legislative change.

The proposed **amendments are not** expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the **North Dakota Highway Patrol, 600 E Boulevard Ave, Bismarck, ND.** A copy of the proposed rules and/or a



regulatory analysis may be requested by writing the above address, emailing **ndhpsafetyedu@nd.gov** or calling **701-328-2447**. Written or oral comments on the proposed rules sent to the above address or telephone number and received by **Monday, July 19, 2021** will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the **North Dakota Highway Patrol** at the above telephone number or address at least **5 days** prior to the public hearing.

Dated this **3rd** day of **June 2021**.

Colonel Brandon Solberg
Superintendent

FULL NOTICE OF INTENT TO **AMEND** ADMINISTRATIVE RULES

TAKE NOTICE that the **North Dakota Highway Patrol** will hold a public hearing to address proposed **amendments to N.D. Admin. Code title 38, article 06, chapter 02, section 07** at 2:00 PM, CDT, **Tuesday, July 6**, at the NDHP conference room, state capitol building, **600 E. Boulevard Ave, Bismarck ND**.

The purpose of the proposed amendments is to define for industry and law enforcement when it is not safe to move an over dimensional load.

38-06-02-07 Travel Restrictions #4: replace the word 'poor' to ½ mile or less.

The proposed amendment provides clarification

38-06-02-07 Travel Restrictions #4: This wording will define for industry and law enforcement when travel is not allowed due to inclement weather for the movement of overwidth or overlength loads.

The proposed **amendment is not** expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the **North Dakota Highway Patrol, 600 E Boulevard Ave, Bismarck, ND**. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address, emailing **ndhpsafetyedu@nd.gov** or calling **701-328-2447**. Written or oral comments on the proposed rules sent to the above address or telephone number and received by **Monday, July 19, 2021** will be fully considered.



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Dated this **3rd** day of **June 2021**.

Colonel Brandon Solberg
Superintendent

FULL NOTICE OF INTENT TO **AMEND** ADMINISTRATIVE RULES

TAKE NOTICE that the **North Dakota Highway Patrol** will hold a public hearing to address proposed **amendments to** N.D. Admin. Code **title 38, article 06, chapter 03, section 01** at 2:00 PM, CDT, **Tuesday, July 6**, at the NDHP conference room, state capitol building, **600 E. Boulevard Ave, Bismarck ND**.

The purpose of the proposed amendments is to remove a rule that has been established in century code and to update a rule that had been inadvertently missed.

38-06-03-01 Permit Fees: #1 No longer needed as the fee is now defined in N.D.C.C 39-12-02.

38-06-03-01 Permit Fees: #8: Replace the words "a calendar year" with "365 days".

The proposed amendments address:

38-06-03-01 Permit Fees: #1: The fee for an interstate permit is established under subdivision b of subsection 3 of section 39-12-02 of N.D.C.C.

38-06-03-01 Permit Fees: #8: The time frame for a weight increased on a work-over rig changed from being valid for a calendar year to 365 days. SB 2151, passed during the 2019 legislative session, changed the time frame for permits from calendar year to 365 days and this change was inadvertently missed.

The proposed **amendments are not** expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the **North Dakota Highway Patrol, 600 E Boulevard Ave, Bismarck, ND**. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address, emailing **ndhpsafetyedu@nd.gov** or calling **701-328-2447**. Written or oral comments on the



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Dated this **3rd** day of **June 2021**.

Colonel Brandon Solberg
Superintendent

FULL NOTICE OF INTENT TO REPEAL ADMINISTRATIVE RULES

TAKE NOTICE that the **North Dakota Highway Patrol** will hold a public hearing to address proposed **repeal of** N.D. Admin. Code **title 38, article 09** at 2:00 PM, CDT, **Tuesday, July 6**, at the NDHP conference room, state capitol building, **600 E. Boulevard Ave, Bismarck ND.**

The rules in Article 38-09-01-01 through 38-09-01-08 are unnecessary as contract passenger carriers are covered under Title 49 of the Federal Code of Regulations adopted by the highway patrol.

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

The proposed repeal of 38-09-01-01 through 38-09-01-08 addresses duplication.

Senate Bill 2097 was passed during the 2021 legislative session and updated the definition of an intrastate commercial motor vehicle. The updated definition includes a vehicle designed to transport more than 8 passengers, including the driver, for compensation or the vehicle is designed or used to transport 16 or more people, including the driver not for compensation. This change allows passenger contract carriers to fall under the rules adopted in N.D.A.C. Chapter 38-04-01.

38-09-01-01 General: The highway patrol has authority to adopt these rules under subsection 3 of section 39-21-46 of the N.D.C.C. These adopted rules fulfill the requirements found in N.D.C.C. 8-02-08 Safety Standards for passenger contract carriers.

38-09-01-02 Driver Qualifications: The highway patrol has adopted driver qualifications in N.D.A.C. 38-04-01-02 (7). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-03 Annual Motor Vehicle Inspection: The highway patrol has adopted annual vehicle inspection requirements in N.D.A.C. 38-04-01-02 (11). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-04 Maintenance and Repair Program: The highway patrol has adopted annual vehicle inspection requirements in N.D.A.C. 38-04-01-02 (11). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-05 Hours of Service: The highway patrol has adopted annual vehicle inspection requirements in N.D.A.C. 38-04-01-02 (10). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-06 Tests Required: The highway patrol has adopted controlled substances and alcohol use and test in N.D.A.C. 38-04-01-02 (1). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-07 Retention of Records: The highway patrol has adopted controlled substances and alcohol use and test in N.D.A.C. 38-04-01-02 (1). These adopted rules fulfill the

requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

38-09-01-08 Insurance: The highway patrol has adopted minimum levels of financial responsibility in N.D.A.C. 38-04-01-02 (5). These adopted rules fulfill the requirements of subsection 1 of section 8-02-08 of N.D.C.C. Safety Standards for passenger contract carriers.

The proposed **repeal is not** expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the **North Dakota Highway Patrol, 600 E Boulevard Ave, Bismarck, ND**. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address, emailing **ndhpsafetyedu@nd.gov** or calling **701-328-2447**. Written or oral comments on the proposed rules sent to the above address or telephone number and received by **Monday, July 19, 2021** will be fully considered.

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Dated this **3rd** day of **June 2021**.

Colonel Brandon Solberg
Superintendent