

Administrative Rules Committee
Submitted by
James Prochniak, NDHP

June 6, 2013

Good morning, Mr. Chairman, and members of the Administrative Rules Committee. My name is James Prochniak, Superintendent of the North Dakota Highway Patrol. I am here today to provide information regarding the procedures we followed in adopting the rules published in the July 2013 supplement to the North Dakota Administrative Code.

Below is a brief summary of the reasons for the change to the Administrative Code and the process used:

1. The changes to the rules did not result from statutory changes made by the Legislative Assembly.
2. The rule changes in 38-04 were mandated by federal regulations. North Dakota is an "adopt by reference" state for the Federal Motor Carrier Regulations. The language changes in 38-04 makes the administrative rule consistent with the language in the federal regulation for the gross vehicle weight of an intrastate vehicle. There were no other options in adopting the rules.
3. The last date of publication of the notice of intent in the rulemaking process for adopting the rules was November 3, 2012. A public hearing was scheduled and held at 1:00 p.m. on November 26, 2012. Public comments were accepted until 1:00 p.m. on December 7, 2012.
4. During the public comment phase, one written comment was received relating to changes to 38-04-01-02. The individual commented that there was a possible error in the new language where it was stated that the intrastate exemption applies to vehicles 26,001 pounds or less. The individual felt the correct weight for the exemption should be 26,000 pounds or less. Additional research was conducted by our agency and it was determined the language should state 26,000 pounds or less and the correction was made.
5. The approximate cost of giving public notice and holding the hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules was \$1,658.25 for publication in newspapers.
6. Reasons for adopting the rules.
 - 38-04 – Motor Carrier Safety Regulations
 - The rule changes in 38-04 were mandated by federal regulations. North Dakota is an "adopt by reference" state for the Federal Motor Carrier Regulations. The language changes in 38-04 makes the administrative rule consistent with the language in the federal regulation for the gross vehicle weight of an intrastate vehicle.

- 38-05 - Flagging and Lighting Requirements for Vehicles and Loads Exempt from Width Limitations
 - The flag size was changed from 12"x12" to 18"x18". Over-dimensional vehicle and load movements are presently required to be marked with 12"x12" red or bright orange flags. Changing the flag size requirement makes North Dakota compatible with federal regulations and other states. Lighting requirements required on over-dimensional movements made during the nighttime provides safety benefits to both the motor carrier and the motoring public.
 - 38-06 - Movement of Oversize and/or Overweight Vehicles and Loads
 - 38-06 took the permit fees that were assessed through department policy and placed them into administrative code. The ton mile fees were assessed through policy, more specifically for movements made during the spring thaw. The weight increase fee only affects the work-over service rig industry. It is a fee assessed since 2008. The weight increase fee authorizes this specific vehicle type to exceed maximum permitted weight by 4 percent. In both instances, these fees have been assessed for a period of time and are being added to the administrative rule for audit purposes based on a recommendation from the state auditors. Secondly, 38-06 added lighting requirements for overdimensional travel during nighttime hours. It requires SAE standards for lighting devices. Thirdly, 38-06 takes the administrative code language for law enforcement portable scale certification from under the Public Service Commission and puts it with the NDHP as the NDHP does the certification of the law enforcement portable scales.
 - 38-07 - Commercial Driver Training School Requirement.
 - Updated definitions including commercial driver's license, owner, and safe mechanical conditions. Included surety bond amount for commercial motor vehicle driver's license instruction. Vehicles must be in safe mechanical condition and commercial vehicles must be inspected annually. Applicants authorize the Bureau of Criminal Investigation and the Federal Bureau of Investigation to conduct background checks. If applicant has a misdemeanor or felony, they are ineligible unless it doesn't directly relate to the position or they've shown rehabilitation. Commercial motor vehicle instructors must submit a copy of their medical card every two years.
7. A regulatory analysis was not requested nor required under Section 28-32-08, but the NDHP did prepare one.
 8. A regulatory analysis and economic impact statement were prepared as required in Section 23-32-08.1. Copies are attached.
 9. The rules do have a fiscal effect. A copy of the fiscal note is attached.
 10. A constitutional takings assessment was prepared as required by NDCC Section 28-32-09. A copy of the assessment is attached.

11. These rules were not adopted as emergency (interim final) rules under NDCC Section 28-32-03.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to answer any questions you may have.

Attachments

- Regulatory Analysis
- Economic Impact Statement
- Fiscal Note
- Constitutional Takings Assessment
- Public Comment
- Impact Statement