

AMENDMENTS TO CHAPTER 38-04-01

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 C - Certification of Safety Auditors, Safety Investigators, and Safety Inspectors.
3. Part 385 - Subpart D - New Entrant Safety Assurance Program.
4. Part 385 - Subpart E - Hazardous Materials Safety Permits.
5. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
6. Part 390 - Federal Motor Carrier Safety Regulations: General.
7. Part 391 - Qualifications of Drivers.
8. Part 392 - Driving of Motor Vehicles.
9. Part 393 - Parts and Accessories Necessary for Safe Operation.
10. Part 395 - Hours of Service of Drivers.
11. Part 396 - Inspection, Repair and Maintenance.
12. 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 one pounds [~~11793.52~~ 11797.18 kilograms] or less are exempt from all federal motor carrier safety regulations. ~~However, vehicles with a gross vehicle weight of twenty-six thousand pounds [11793.52 kilograms] or less are not exempt from the federal motor carrier regulations or hazardous materials regulations if unless the vehicle is used to transport hazardous materials requiring a placard or if unless the vehicle is designed to transport more than fifteen passengers sixteen people, including the driver.~~

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

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

Law Implemented: NDCC 39-21-46

AMENDMENTS TO CHAPTER 38-05-02

Section 38-05-02-01 is amended as follows:

38-05-02-01. Standards for marking vehicles and loads.

1. Any vehicle or load exempt from width limitations as provided for in North Dakota Century Code section 39-12-04 must display red or bright orange flags that shall be mounted on the most practical outside dimension on the traffic side of the overwidth vehicle or load, front and rear. If one flag is visible from both the front and rear, only one flag would be required. All flags shall be made of red or bright orange cloth or other suitable material and shall be at least ~~twelve~~ eighteen inches [~~30.48~~ 45.72 centimeters] by ~~twelve~~ eighteen inches [~~30.48~~ 45.72 centimeters] in size.
2. In lieu of the flagging requirements in subsection 1:
 - a. Overwidth movements may be followed by a vehicle with lighted flashing lights that are visible from the rear for a minimum five hundred feet [152.4 meters]; or
 - b. 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 the rear for a minimum five hundred feet [152.4 meters].
3. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width are exempt from the above flagging requirements, however:
 - a. ~~All movements shall then be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum five hundred feet [152.4 meters]; that exceed fourteen feet six inches [4.4196 meters] in overall width shall have a red or bright orange flag that is at least eighteen inches [45.72 centimeters] by eighteen inches [45.72 centimeters] in size mounted on a pole showing the extreme outside width and height on the traffic side of the load. If one flag is not clearly visible from the front and rear of the vehicle, then flags must be mounted on both the front and rear of the vehicle; or~~
 - b. Vehicles, or vehicles towing or hauling loads, that exceed fourteen feet six inches [441.96 centimeters] in overall width shall be equipped with a lighted rotating or flashing amber light or lights that are visible from the front and rear for a minimum five hundred feet [152.4 meters]; or
 - c. ~~Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width shall have a red or bright orange flag that is at least twelve inches [30.48 centimeters] by twelve inches [30.48 centimeters] in size mounted on a pole showing the extreme outside width and height on the~~

~~traffic side of the load. If one flag is not clearly visible from the front and rear of the vehicle, then flags must be mounted on both the front and rear of the vehicle. must be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum of five hundred feet [152.4 meters].~~

History: Effective June 1, 1986; amended effective February 1, 2000; _____.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

A new chapter to article 38-05 is added as follows:

CHAPTER 38-05-04
MIRROR REQUIREMENTS

Section

38-05-04-01 Mirror Requirements

38-05-04-01. Mirror requirements. All vehicles and loads exempt from width limitations must meet the mirror requirements required in North Dakota Century Code chapter 39-21. Every motor vehicle must be equipped with a mirror so located as to reflect to the driver a rearview of the highway for a distance of at least two hundred feet [60.96 meters].

History: Effective _____.

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

Law Implemented: NDCC 39-21-46, 39-21-38

AMENDMENTS TO CHAPTER 38-06-02

Section 38-06-02-02 is amended as follows:

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

1. All overdimensional vehicles and loads must have minimum ~~twelve-inch eighteen-inch~~ by ~~twelve-inch eighteen-inch~~ [~~304.8 millimeters 45.72 centimeters~~ by ~~304.8 millimeters 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, there must be a minimum twelve-inch by sixty-inch [304.8 millimeters by 1524 millimeters] OVERSIZE LOAD sign on~~

~~the rear. 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.~~ 2. The towing 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] to the driver.

3. 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 chapters 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 500 feet [152.4 meters], under clear atmospheric conditions at night.
 - i. If the lights on 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 8 feet 6 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; _____.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

Section 38-06-02-07 is amended as follows:

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. 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.
 - a. ~~When any above-named holiday is on a Sunday, the following Monday is the holiday.~~
 - b. ~~When any above-named holiday is on a Saturday, the preceding Friday is the holiday.~~
 - c. 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. Permits do not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.
4. Permits do not authorize travel on shoulders of road.
5. A single trip permit is required for each movement that is overdimensional or overweight. An annual permit for overwidth vehicle and load movements is required in lieu of the single trip permit issued for overwidth movements.
6. 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; _____.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

AMENDMENTS TO CHAPTER 38-06-03

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

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 fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
2. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip movement approval form. If the permit is issued on official receipt/permit, SFN 3507, the fee is ten dollars.
3. 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.
4. 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.	\$30
160,001 - 170,000 lbs.	\$40
170,001 - 180,000 lbs.	\$50
180,001 - 190,000 lbs.	\$60
190,001 lbs. and over	\$70

5. There is an additional ton/mile 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 fee is only assessed upon that portion of gross vehicle weight exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight.
6. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of fifty cents per mile [kilometer] and fifty dollars per hour.
7. The fee for an equipment approval certificate is fifteen dollars.
8. The ton mile 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 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 when the gross vehicle weight exceeds 105,500 pounds and travel is on highways restricted by legal weight, 8-ton and 7-ton designated state highways.

2. Five dollars per ton mile when the gross vehicle weight exceeds:
 - i. 130,000 pounds on highways restricted by legal weight
 - ii. 120,000 pounds on 8-ton highways
 - iii. 110,000 pounds on 7-ton highways
 - iv. 80,000 pounds on 6-ton highways

3. The five dollar per ton mile fee for self-propelled special mobile equipment is assessed when the gross vehicle weight exceeds:
 - i. 105,500 pounds on highways restricted by legal weight
 - ii. 105,500 pounds on 8-ton highways
 - iii. 105,500 pounds on 7-ton highways
 - iv. 80,000 pounds on 6-ton highways

9. The fee for a weight increase on a workover service rig is \$990. The fee shall be assessed on a workover service rig that exceeds 670 pounds per inch of tire width on a single or tandem axle, exceeds 60,000 pounds on a triple axle, and 68,000 pounds on a four axle group.
 - a. The weight increase is valid for a calendar year.
 - b. The weight increase can only be assessed on model year 2010 workover service rigs and older.

10. 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; _____.

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

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

A new chapter to article 38-06 is added as follows:

CHAPTER 38-06-05
CERTIFICATION OF PORTABLE SCALES

<u>Section</u>	
<u>38-06-05-01</u>	<u>Certification</u>
<u>38-06-05-02</u>	<u>Recertification</u>

38-06-05-01. Certification. Portable vehicle scales utilized for law enforcement purposes must be tested by an agent of the North Dakota highway patrol or a registered

service person or company prior to being utilized for enforcement purposes. A portable vehicle scale utilized for enforcement purposes may be certified by the highway patrol or a registered service person or company. The highway patrol may certify scales used for enforcement purposes by actual testing of the device or by witnessing the test. The highway patrol will maintain a record of certification of portable vehicle scales utilized for law enforcement purposes.

The device utilized by the highway patrol or registered service person or company for the certification of portable vehicle scales should be one that is certified annually by a facility that has practices and standards that are traceable to the national institute of standards and technology, an agency of the U.S. department of commerce.

38-06-05-02. Recertification. An agent of the North Dakota highway patrol or a registered service person or company may inspect, test, and calibrate portable vehicle scales utilized for law enforcement purposes. The owner of any portable vehicle scale utilized for enforcement purposes is responsible for its accuracy and should have the device tested and recertified annually. Failure to recertify a portable vehicle scale within 15 months of the prior year's annual recertification will disqualify the device to be utilized for enforcement purposes. The highway patrol will maintain a record of recertification of portable vehicle scales utilized for law enforcement purposes.

The device utilized by the highway patrol or registered service person or company for the recertification of portable vehicle scales should be one that is certified annually by a facility that has practices and standards that are traceable to the national institute of standards and technology, an agency of the U.S. department of commerce.

History: Effective

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-07

AMENDMENTS TO CHAPTER 38-07-01

Section 38-07-01-01 is amended as follows:

38-07-01-01. Definitions. In this article, unless the context or other subject matter requires:

1. "Commercial driver's license" means a license issued under North Dakota Century Code chapter 39-06.2 which authorizes an individual to drive a class of commercial motor vehicle as defined in subsection 6 of section 39-06.2-02.

1. 2. "Contract" means a written agreement between the commercial driver training school and a student for classroom instruction, behind-the-wheel training, internet course, or any combination thereof.
2. 3. "Internet course" means an electronic course of instruction as authorized under paragraph 2 of subdivision a of subsection 2 of North Dakota Century Code section 39-06-01.1.
3. 4. "Lesson" means a continuous period of time during which instruction is given for the purpose of operating a motor vehicle whether by classroom instruction, practice driving, or internet course. A one-hour lesson means one hour of actual instruction.
4. 5. "Location" means a designated site at which the business of a commercial driver training school is transacted and its records are kept.
5. 6. "Superintendent" means the superintendent of the North Dakota highway patrol.
7. "Owner" means a person or persons, including a partnership, corporation, or other business entities, that have a vested interest in and control over a school.
8. "Safe mechanical condition" means the continual compliance with safety requirements of vehicles that are used to train school students and have passed either a state safety inspection or a federal motor carrier safety administration inspection.

History: Effective December 1, 1988; amended effective June 1, 2002;_____.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-06-01.1, 39-25-01

AMENDMENTS TO CHAPTER 38-07-02

Section 38-07-02-06 is amended as follows:

38-07-02-06. Insurance and safety.

1. The licensee shall file with the superintendent evidence of liability insurance obtained from a company authorized to do business in the state of North Dakota. Proof of insurance is required for each vehicle used for driver training in the amount of:

- a. At least one hundred thousand dollars because of bodily injury to or death of any one person in any one accident.
 - b. At least three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident.
 - c. At least twenty-five thousand dollars because of damage to or destruction of property of others in any one accident.
 - d. At least thirty thousand dollars for medical expenses regardless of liability.
2. The licensee shall furnish evidence of such coverage to the superintendent stipulating that such insurance will not be canceled or terminated except upon ten days' prior written notice to the superintendent.
 3. In the event such insurance is canceled or terminated, the school license certificate shall terminate automatically. All vehicles used in the operation of the school may not thereafter be used for driver training school purposes until such school obtains adequate insurance coverage and said license is reenacted. School certificates terminated under the provision of this section must be surrendered to the superintendent within a period of ten days.
 4. The commercial driver training school owner or operator shall secure and submit with the application for license a continuous surety company bond in the principal sum of two thousand five hundred dollars for class D and M instruction or a continuous surety company bond in the principal sum of five thousand dollars for commercial motor vehicle driver's license instruction for the protection of the contractual rights of students, undertaken by a company authorized to do business in the state of North Dakota. The concerned surety company may cancel said bond upon giving thirty days' written notice thereof to the superintendent. The surety company must be released of all liability for any breach of any condition of the bond occurring after the effective date of the cancellation.

History: Effective December 1, 1988; amended effective _____.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

AMENDMENTS TO CHAPTER 38-07-03

Section 38-07-03-05 is amended as follows:

38-07-03-05. Vehicle inspection. All vehicles used for driver training purposes must be in safe mechanical condition. Vehicles must pass a vehicle inspection immediately after installation of dual control devices and periodically thereafter as may be designated by the superintendent. The vehicle inspection must be done by a person authorized by the superintendent. The department of transportation annual vehicle inspection will be accepted for commercial vehicles. The license of a commercial driver training school or instructor may be suspended at any time if a vehicle used for driver training purposes is not maintained in a safe operating condition.

History: Effective December 1, 1988; amended effective April 1, 1992;_____.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-02

AMENDMENTS TO CHAPTER 38-07-04

Section 38-07-04-01 is amended as follows:

38-07-04-01. Instructor requirements. An applicant for a commercial driver training instructor license shall must:

1. Be a resident of the state of North Dakota, unless waived by the superintendent for good cause.
2. Furnish the superintendent information relating to all previous places of residence located outside of the state of North Dakota.
3. Be at least twenty-one years of age.
4. Read, write, and speak the English language.
5. Have normal peripheral vision, depth perception, and color vision. Visual acuity of at least 20/40 in each eye, with or without corrective lenses.
6. Have been a licensed driver for three years for class license instruction, holding a valid North Dakota driver's license unless waived by the superintendent for good cause, free from requirement to show proof of financial responsibility, and have a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation of the instructor license.

7. Submit with the application a copy of the applicant's driving record dated not earlier than thirty days prior to the receipt of application by the superintendent.
8. Not have been convicted of a crime involving moral turpitude.
9. Furnish the superintendent with one set of fingerprints and photographs and authorize investigation with the bureau of criminal investigation and the federal bureau of investigation to determine if the applicant has a criminal record.
 - a. The office of attorney general's request for criminal history record form, authorization form, fingerprints, and fee for background check must be submitted with the application for an instructor license.
 - b. If the applicant has been convicted of a misdemeanor or felony, then the applicant is ineligible to be an instructor unless:
 1. The superintendent determines the crime does not directly relate to the position of instructor; or
 2. The applicant has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of an instructor.
10. Pass a written and ~~driver training~~ road test for each class of license for which driver training is to be offered. ~~The test tests must have been developed and be~~ administered by the North Dakota department of transportation drivers license division. The superintendent may periodically require a licensed instructor to submit to a written examination consisting of all or any part of the test specified in this section. The test must include:
 - a. The operation of a motor vehicle.
 - b. Traffic laws.
 - c. Road signs, laws and regulations, and other material pertaining to and affecting the driver, traffic, and motor vehicle.
11. Be in good physical and mental health, and having no illness or condition that would render the applicant unable to safely perform the duties as an instructor. The applicant shall submit to a physical examination by a licensed physician and a certificate must accompany the application. For commercial driver's license instruction, the instructor shall submit a copy of the department of transportation medical card every two years. The superintendent may periodically require a licensed instructor to submit to a physical examination by a licensed physician and a certificate of the examination must be submitted to the superintendent.
12. Instructor preparation:

- a. Hold a valid North Dakota driver education certificate issued by the department of public instruction; or
- b. Have successfully completed an approved preparation course or courses for commercial driver education instructors. Instructor preparation courses must be submitted to and approved by the superintendent. Preparation courses conducted by a licensed commercial driver training school must consist of both classroom training and practical driving situations. At a minimum, instructor development training should consist of thirty hours of classroom and thirty hours of behind-the-wheel practical training. The behind-the-wheel practical training must consist of both actual driving and riding along and observing a licensed instructor during a student training session. Driver education instructor development courses offered through a university system will also be considered for approval.

13. Instructor requirements may be waived by the superintendent for good cause when pertaining to a commercial driving school licensed to offer the internet course only.

History: Effective December 1, 1988; amended effective April 1, 1992; June 1, 2002; _____.

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-06-01.1, 39-25-04