

Legislative Council's Administrative Rules Committee Hearing
March 12, 2008

ND Highway Patrol Administrative Rules Testimony

Comments Submitted by

Lieutenant Michael Gerhart, Safety and Education Officer
Lieutenant Kyle Kirchmeier, Motor Carrier Operations Commander
Ms. Leanna Emmer, Motor Carrier Permit Section Supervisor

Chairman Senator Tom Fischer, Vice Chairman Representative Duane DeKrey,
committee members.

My name is Lieutenant Michael Gerhart, Safety and Education Officer with the North Dakota Highway Patrol. With me today is Lieutenant Kyle Kirchmeier, Motor Carrier Operations Commander, and Ms. Leanna Emmer, Motor Carrier Permits Supervisor. We are here to provide testimony on the procedures followed by the Highway Patrol in adopting changing to North Dakota Administrative Code Chapter 38-04-01 (adoption of Code of Federal Regulations, Title 49, Part 385, subparts C, D, and E); Chapters 38-06-02 and 38-06-03 (permit regulations and fees); Chapters 38-08-01, 38-08-02, 38-08-03, and 38-08-04 (course approval for insurance premium reduction).

The 60th Legislative Assembly, Senate Bill 2406, authorized the Highway Patrol to issue annual permits for overwidth vehicles or loads. This amendment is included in NDAC Chapter 38-06-02 and will be discussed by Ms. Emmer. NDAC Chapter 38-04-01 involves the adoption of certain parts of Title 49, Code of Federal Regulations, and will be discussed by Lt. Kirchmeier. NDAC Chapters 38-08-01, 02, 03, and 04 was amended to include the approval of on-line and self-study courses for insurance premium reduction in addition to classroom courses. The Highway Patrol Superintendent is authorized to approve courses and set regulations for courses as per NDCC Chapter 26.1-25-04.1. I will cover these amendments.

A full notice of the hearing was available at Highway Patrol Headquarters, at our district offices, and was filed with the Legislative Council. A copy of the abbreviated notice was published once in each official county newspaper. The proposed amendments to each chapter were provided to the Legislative Council and were available at Headquarters and our district offices as well as being published on our website. The public hearing was held on Tuesday, October 30, 2007, in Room 330 of the North Dakota Department of Transportation, Bismarck. A joint public hearing was held with the Department of Transportation as they had proposed amendments to an administrative rule which affects enforcement by the Highway Patrol. A roster was provided at the public hearing and individuals could indicate if they wanted to be notified of this hearing. One individual indicated notification and he was notified electronically of the hearing date, time, and location. The required time period for public comments was allotted. The Guidelines Regarding Administrative Rules listed in the memorandum from the ND Attorney General dated July 23, 2007, was followed for the process.

No concerns or objections were received on any of the amendments. A letter was received stating support for the insurance premium reduction courses to be conducted on-line.

The total cost incurred by the Highway Patrol for the public hearing process was approximately \$2771.03. The public notice publication was \$2,583.35, Attorney General fees were \$177.68, and postage, stationery, and copying fees were estimated at approximately \$10.00.

The amendments made to NDAC Chapters 38-08-01, 38-08-02, 38-08-03, and 38-08-04 will allow for course instruction to be completed on-line (internet) or by self-study as alternatives to the classroom setting for insurance premium reduction. Changes made to the administrative code provide the requirements for approval of courses for this type of instruction (pages 71, 74, 75). The proposed amendments do not make it mandatory; they only offer another choice. Other changes made to the rule address the issues to be covered in the course that relate to current driving behavior and crashes (pages 72, 73, 76). The course material will be required to basically cover the same issues; however, they are stated in a more concise manner and cover primary issues that are major factors in today's driving habits and crashes. Additional amendments were for clarification and clean up purposes, i.e., "accident" changed to "crash" and "administration" to "department" (pages 71, 72, 75).

In regards to the amendments for insurance premium reduction, a regulatory analysis, small entity regulatory analysis, and small entity economic impact statement were prepared and are attached. A constitutional takings assessment was not required; however, one was prepared stating this fact. The amendments to the insurance premium reduction rules were not adopted as an emergency rule.

I would be happy to answer any questions, Mr. Chairman, that you or committee members may have. If there aren't any questions, I will turn the testimony over to Lt. Kirchmeier (Ms. Leanna Emmer). Thank you.

Chairman Senator Tom Fischer, Vice Chairman Representative Duane DeKrey, committee members.

My name is Lieutenant Kyle Kirchmeier, Motor Carrier Operations Commander with the North Dakota Highway Patrol. I will be testifying on section 38-04-01-02, Adoption of Regulations (page 65). The North Dakota Highway Patrol is adopting by reference Title 49, Code of Federal Regulations, Part 385 – Subparts C, D, and E due to being federally mandated.

The adoption of these regulations has no outward affect on the regulated community; they mainly pertain to the internal activities of the Highway Patrol.

Highway Patrol motor carrier troopers already conduct safety audits, inspections, and compliance reviews as part of enforcement efforts for safe transportation on our highways. By adopting these regulations (Part 385 subparts C and D), it assures that those troopers are trained and conduct a certain number of audits, inspections, and reviews each year to remain certified. If we do not comply, federal MCSAP (Motor Carrier Safety Alliance Program) funding would be withheld resulting in a loss of operating revenue to the Highway Patrol.

All companies hauling hazardous materials interstate are required to have a federal hazardous materials permit. The adoption of Part 385 subpart E gives the Highway Patrol the authority to take enforcement action for failure to purchase/obtain a permit.

A regulatory analysis was prepared and is attached. A small entity regulatory analysis, small entity economic impact statement and a constitutional takings assessment were not required; however, they were prepared stating this fact and are also attached. These amendments were not adopted as an emergency rule.

Chairman Senator Tom Fischer, Vice Chairman Representative Duane DeKrey, committee members.

My name is Leanna Emmer, Motor Carrier Operations Permit Section Supervisor. One of the amendments made in NDAC 38-06-02 resulted from a statutory change made by the 60th Legislative Assembly. Senate Bill 2406 gave the Highway Patrol the authority to issue annual permits for overwidth vehicles and loads. Previously law allowed only for the issuance of single trip permits. Amendments to 38-06-02 were made so travel restrictions and safety requirements would apply to both single trip permits and annual overwidth permits issued by the Highway Patrol (pages 67, 68, 69.)

REGULATORY ANALYSIS (08-24-07)

The North Dakota Highway Patrol believes that the proposed amendments to Article 38-08, Premium Reduction for Accident Prevention Course Completion, will not have an impact on the regulated community in excess of \$50,000.

The proposed amendments to Article 38-08 allow for course instruction for insurance premium reduction to be completed on-line (internet) or by self-study as alternatives to the classroom setting and state what is required for approval for this type of instruction. The proposed amendments do not make it mandatory; they will only offer another choice to the consumer.

The courses currently approved are national courses and many of these are already set up for on-line or self-study instruction. The cost for the on-line/self-study program may be slightly more than the classroom; however, there would be no travel involved for the student and they could work at their own pace. For those companies that require a large number of their employees to complete a defensive driving course, the classroom setting may still be the best option with only those employees unable to attend to access the on-line/self-study format. It could also mean a savings to those organizations that provide the classroom instruction due to fewer instructors, less traveling expenses, and lower room rental fees.

A downside could be the need for fewer instructors; however, not everyone has access to a computer and would still require the classroom instruction.

There could be companies from out-of-state who may submit their on-line courses to the Highway Patrol for approval for insurance premium reduction. If these courses comply with the requirements set forth in Article 38-08, they could be approved and the course fees could possibly be sent out-of-state.

Changes to section 38-08-02-02, course curriculum, have been proposed to address the issues most critical relating to current driving behavior and crashes. The proposed changes basically cover the same issues to be presented in the course; however, they stated in a more concise manner. Additional amendments proposed throughout Article 38-08 are for clarification and clean up purposes, i.e., accident changed to crash.

SMALL ENTITY REGULATORY ANALYSIS

The North Dakota Highway Patrol believes that the amendments to Article 38-08 do not have a substantial small entity regulatory impact.

The proposed amendments to Article 38-08 allow for course instruction for insurance premium reduction to be completed on-line (internet) or by self-study as alternatives to the classroom setting and state what is required for approval for this type of instruction. Organizations who instruct courses and individuals who elect to take a course are not mandated to do so on-line or by self-study. The amendments being made are to allow for the on-line or self-study options in addition to the classroom instruction.

The cost for an on-line or self-study course may be slightly more than the classroom fee; however, there would be no travel expenses for the student and the course could be completed at one's own pace. For those companies that require a large number of their employees to complete a defensive driving course, the classroom setting may still be the best option with only those employees unable to attend to access the on-line/self-study format. Not everyone has access to a computer or would elect to take the course on-line or by self-study and, therefore, would still utilize the classroom setting and instructors.

Changes to section 38-08-02-02, course curriculum, have been proposed to address the issues most critical relating to current driving behavior and crashes. The proposed changes basically cover the same issues to be presented in the course; however, they stated in a more concise manner. Additional amendments proposed throughout Article 38-08 are for clarification and clean up purposes, i.e., accident changed to crash.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

The North Dakota Highway Patrol believes that the amendments to Article 38-08 do not have a substantial small entity economic impact.

There could be a cost to an organization to develop their course for on-line or self-study use; however, most approved courses are developed nationally and may already be set up for on-line/self-study instruction. With on-line/self-study instruction, there may be a need for fewer instructors, less traveling expenses, and lower room rental fees which could off-set this expense.

The cost for an on-line or self-study course may be slightly more than the classroom fee; however, there would be no travel expenses for the student and the course could be completed at one's own pace. For those companies that require a large number of their employees to complete a defensive driving course, the classroom setting may still be the best option with only those employees unable to attend to access the on-line/self-study format. Not everyone has access to a computer or would elect to take the course on-line or by self-study and, therefore, would still utilize the classroom setting and instructors.

The proposed amendments do not make the taking of an insurance premium reduction course on-line or by self-study mandatory; they only provide other options for receiving the instruction.

Small North Dakota entities may be affected by out-of-state companies submitting applications for approval of their on-line courses. If companies from out-of-state submit their on-line courses to the Highway Patrol for approval for insurance premium reduction and if these courses comply with the requirements set forth in Article 38-08, they could be approved and the course fees could possibly be sent out-of-state. There is no fee submitted with the application requesting course approval by the North Dakota Highway Patrol so there would be no additional affect on state revenues if there is an increase in courses being approved.

Changes to section 38-08-02-02, course curriculum, have been proposed to address the issues most critical relating to current driving behavior and crashes. The proposed changes basically cover the same issues to be presented in the course; however, they stated in a more concise manner. Additional amendments proposed throughout Article 38-08 are for clarification and clean up purposes, i.e., accident changed to crash.

TAKINGS ASSESSMENT

The North Dakota Highway Patrol determined that the proposed amendments to Article 38-08, Premium Reduction for Accident Prevention Course Completion, will not take any or limit the use of private real property.

REGULATORY ANALYSIS

(08-24-07)

Title 49, Code of Federal Regulations, Part 385 – Subparts C, D, and E are being adopted to section 38-04-01-02, Adoption of regulations, by the North Dakota Highway Patrol due to being federally mandated. The Highway Patrol has determined that the adoption of these regulations will not have an impact on the regulated community in excess of \$50,000.

The adoption of these regulations has no outward affect on the regulated community; they mainly pertain to the internal activities of the Highway Patrol.

Highway Patrol Motor Carrier Troopers already conduct safety audits, inspections, and compliance reviews as part of enforcement efforts for safe transportation on our highways. By adopting these regulations (Part 385 subparts C and D), it assures that those troopers are trained and conduct a certain number of audits, inspections, and reviews each year to remain certified. If we do not comply, federal MCSAP (Motor Carrier Safety Alliance Program) funding would be withheld resulting in a loss of operating revenue to the Highway Patrol.

All companies hauling hazardous materials interstate are required to have a federal hazardous materials permit. The adoption of Part 385 subpart E gives the Highway Patrol the authority to take enforcement action for failure to purchase/obtain a permit.

SMALL ENTITY REGULATORY ANALYSIS

The proposed adoption of new rules to section 38-04-01-02 are federally mandated rules under Title 49, Code of Federal Regulations, and are therefore exempt from the small entity regulatory analysis requirement.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

The proposed adoption of new rules for section 38-04-01-02 are federally mandated rules under Title 49, Code of Federal Regulations, and are therefore exempt from the small entity economic impact statement requirement.

TAKINGS ASSESSMENT

The North Dakota Highway Patrol determined that the adoption of Title 49, Code of Federal Regulations, Part 385 – Subparts C, D, and E – to section 38-04-01-02, Adoption of regulations, will not take any or limit the use of private real property.

REGULATORY ANALYSIS

(09-14-07)

The North Dakota Highway Patrol believes that the proposed amendments to Chapters 38-06-02 and 38-06-03 will not have an impact on the regulated community in excess of \$50,000.

The proposed amendment in section 38-06-02-01 will allow the North Dakota Highway Patrol to issue another permit type to industry in lieu of the single trip permits. During the 2007 Legislature, the North Dakota Highway Patrol was granted permission to issue annual overwidth permits.

The proposed amendment in section 38-06-02-02 changes the minimum size of an Oversize Load sign from 18-inches x 84-inches to 12-inches x 60-inches. With the new aerodynamic design of trucks, the front of the truck is narrower so the 18-inch x 84-inch sign wraps around to the side of the vehicle. A company would have to use a specially designed rack to mount the sign on so that it would be clearly visible. Changing the minimum size of the sign to 12-inch x 60-inches eliminates a problem for industry, continues to give notice to the motoring public of an oversize load, and brings uniformity on signing requirements for the trucking industry traveling into adjacent states.

The proposed amendment in section 38-06-02-05 is so the North Dakota Department of Transportation can require an insurance bond when a carrier wishes to move a vehicle or load excessive in size or weight that is unusual in nature. In these instances, it may be necessary to have additional North Dakota Department of Transportation personnel to accompany the movement to direct and control the motoring public or to inspect the roadway or bridges for damage once the movement has passed over that section.

One proposed amendment to section 38-06-02-07 will allow overdimensional vehicle and load movements to travel one half hour before sunrise to one half hour after sunset. North Dakota will be uniform with adjacent and other western regional states. This will have a positive impact for the trucking industry and will not have adverse effects on the motoring public.

The second proposed amendment to section 38-06-02-07 to eliminate the words 'single trip' was so the travel restrictions for overdimensional load movements would apply to both single trip and annual overwidth permits.

One proposed amendment to section 38-06-03-01 will increase escort and mileage fees assessed when an official North Dakota Highway Patrol escort is required. Highway Patrol escorts are generally required for load movements excessive in size and weight. With higher fuel prices, maintenance, and salaries, the increase is justifiable. The \$30 per hour escort fee and \$.30 per mile mileage fee has been in place since January 1988.

A second proposed amendment to section 38-06-03-01 is to clarify the fee for the equipment approval certificate. The fee for the equipment approval certificate is not stated in law or administrative rule, except that the North Dakota Highway Patrol has the authority to charge an administrative fee. A \$15 fee is currently assessed.

SMALL ENTITY REGULATORY ANALYSIS

The North Dakota Highway Patrol believes that the amendments to Chapters 38-06-02 and 38-06-03 do not have a substantial small entity regulatory impact.

The 2007 Legislature granted the North Dakota Highway Patrol permission to issue annual overwidth permits. Adding annual permits for the movement of overwidth vehicle and loads cleans up the language in addition to allowing the North Dakota Highway Patrol to issue these permits. Presently it states the North Dakota Highway Patrol can only issue single trip permits.

Changing the minimum size of the Oversize Load sign from 18-inches x 84-inches to 12-inches x 60-inches is beneficial to industry and presents no adverse effects. Industry is still allowed to use the 18-inch x 84-inch Oversize Load sign.

Companies hauling loads excessive in size and weight or unusual in nature must provide written verification of liability and property damage insurance coverage. The insurance bond will ensure the North Dakota Department of Transportation is listed as an additional insured. This is in the best interest of not only the state, but also the carrier.

Extending travel time for overdimensional vehicle and load movements is beneficial to industry and presents no adverse effects.

The increased escort fees are justifiable to cover the rising costs of fuel prices, vehicle maintenance, and salaries.

The amendment for the equipment approval fee is for clarification purposes.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

The North Dakota Highway Patrol believes that the amendments to Chapters 38-06-02 and 38-06-03 do not have a substantial small entity economic impact.

Allowing industry to purchase an annual overwidth permit in lieu of single trip permits has no negative impact on small entity economic impact. It provides them with yet another option when purchasing permits. The 2007 Legislature granted the North Dakota Highway Patrol permission to issue the annual overwidth permits.

Changing the minimum size of the 'Oversize Load' sign from 18-inches by 84-inches to 12-inches by 60-inches will benefit industry. The smaller size will fit better on the front of the newly designed aerodynamic trucks which are narrower at the front.

There could be a cost to a carrier to increase insurance coverage when moving a vehicle or load excessive in size and weight or unusual in nature. Carriers moving loads and vehicles of this nature generally have sufficient insurance coverage. This change would require that the North Dakota Department of Transportation is shown as additional insured.

Extending allowable travel time for overdimensional load movements will benefit industry.

The increased escort fees will have a minimal impact but are justified by increased fuel prices, vehicle maintenance, and salaries caused by inflation.

The fee for the equipment approval certificate is not stated in law or administrative rule, except that North Dakota Highway Patrol has the authority to charge an administrative fee. This \$15 fee is currently being assessed and, therefore, will not have an impact. The amendment provides clarification.

TAKINGS ASSESSMENT

The North Dakota Highway Patrol determined that the proposed amendments to Chapters 38-06-02 and 38-06-03 will not take any or limit the use of private real property.