

TESTIMONY BEFORE
ADMINISTRATIVE RULES COMMITTEE
OF THE NORTH DAKOTA LEGISLATIVE COUNCIL
JUNE 11, 2009
LINDA BUTTS-DEPUTY DIRECTOR

N.D. ADMIN. Code Chapter)	REPORT OF THE
37-10-01, Out-of-Service Order Violations,)	ND DEPARTMENT OF
Chapter 37-10-03 Hazardous Materials)	TRANSPORTATION
Endorsement)	June 11, 2009
Drivers License & Traffic Safety Division)	
Pages 67 -69)	

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Good morning Mr. Chairman and Administrative Rules Committee. Through the administrative rules process, the NDDOT made the following changes regarding out-of-service order violations and added a new chapter pertaining to a hazardous materials endorsement. The changes and new chapter are to comply with federal law, and comply with federally mandated rules under the Motor Carrier Safety Improvement Act of 1999 and the USA Patriot Act. Specifically, the following changes were made:

- I. AMEND Chapter 37-10-01 on the recommendation of Federal Motor Carrier Safety Administration auditors following a CDL Review.
 - a. The suspension period for driving a commercial motor vehicle in violation of an out-of-service order increased to comply with federal rules. 37-10-01-02 Page 67.
 - b. Added the word "cancelled" and "cancellation" to comply with federal rules. Added clarifying language to lifetime suspension to comply with federal rules pertaining to major offenses under 49 CFR 383.51 (b). 37-10-01-05 Page 67 & 68.
 - c. Increased the civil penalty for a driver convicted of violating an out-of-service order to comply with federal rules. 37-10-01-07 Page 68.
 - d. Increased the civil penalty for an employer convicted of authorizing a driver to operate a commercial vehicle during an out-of-service order to comply with federal rules. 37-10-01-08 Page 68.

II. New Chapter 37-10-03 on the recommendation of Federal Motor Carrier Safety Administration auditors following a CDL Review.

- a. Prohibits the director from issuing a hazardous material endorsement to an individual unless the transportation security administration has determined the individual does not pose a security risk.
- b. Requires the director to revoke or deny a hazardous materials endorsement if the transportation security administration serves the state with a determination of threat assessment.

In response to the May 26, 2009, letter from N.D. Legislative Council, the North Dakota Department of Transportation states:

1. The proposed amendments to N.D. Admin. Code Chapter 37-10-01 and new N.D. Admin. Code Chapter 37-10-03 were not a result of statutory changes made by the Legislative Assembly.
2. The proposed amendments to N.D. Admin. Code Chapter 37-10-01 and new N.D. Admin. Code Chapter 37-10-03 were made to comply with Federal Motor Carrier Safety Administration auditor recommendations, to comply with federal law, and to comply with federally mandated rules under the Motor Carrier Safety Improvement Act of 1999 and the USA Patriot Act.
3. The Department of Transportation published notice in all county newspapers advising generally of the content of the rulemaking, where copies of the proposed rules may be obtained for review, and stating the location, date, and time of the public hearing. The rules were also published on the NDDOT website.

The department conducts public hearings on all substantive rulemaking. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any change occasioned by the comments.

4. No oral comments were received at the public hearings held in Bismarck on December 30, 2008, and February 24, 2009. No written comments were received by 5:00 p.m. on March 6, 2009.
5. The approximate cost of giving public notice, holding the hearings, and the cost (not including staff time) of developing and adopting the rules was \$4,122.
6. The rules were amended and new chapter added to comply with Federal Motor Carrier Safety auditor recommendations, to comply with federal law, and to comply with federally mandated rules under the Motor Carrier Safety Improvement Act of 1999 and the USA Patriot Act. The rules in chapter 37-10-01 were amended to comply with federal rules pertaining to penalties for violating out of service orders and for driving a commercial motor vehicle while the commercial driving privileges are suspended, revoked, or canceled. The new chapter 37-10-03 was added to comply with federal rules pertaining to the issuance of a hazardous materials endorsement for operating a commercial motor vehicle transporting hazardous material.

The following specific changes to N.D. Admin. Code Chapter 37-10-01 were made:

- Section 37-10-01-02, First violation of an out-of-service order changed from "ninety" days to "one hundred eighty" days, added "within ten years" and changed "one year" suspension to "two years" for a second violation, added "within ten years" for a third or subsequent violation.
- Section 37-10-01-05, Added "canceled" and "or cancellation" to the license suspension or revocation or otherwise disqualified, added "for any of the major offenses under 49 CFR 383.51 (b)" for a lifetime suspension, revocation, cancellation, or otherwise disqualified, added "canceled" to driving while privileges are suspended, revoked, or otherwise disqualified while transporting hazardous materials or operating a motor vehicle designed to transport more than sixteen passengers.
- Section 37-10-01-07, Changed the civil penalty for a driver convicted of violating an out-of-service order from "one" thousand "one" hundred dollars to "two" thousand "five" hundred dollars, changed not "more" than "two" thousand "seven hundred fifty" dollars to not "less" than "five" thousand dollars "for a second or subsequent conviction."
- Section 37-10-01-08, Changed the civil penalty for an employer convicted of authorizing a driver to operate a commercial motor vehicle while the driver is subject to an out-of-service order from not less than two thousand seven hundred fifty dollars and not more than "eleven" thousand dollars to not less than two thousand seven hundred fifty dollars and not more than "twenty five" thousand dollars.

The following specific additions to the new N.D. Admin. Code Chapter 37-10-03 were made:

- Section 37-10-03-01, Requires Transportation Security Administration approval of hazardous material endorsement issuances for commercial drivers, prohibits the director from issuing a commercial driver license with a hazardous material endorsement unless the Transportation Security Administration has determined that the individual does not pose a security risk, requires the director to revoke an individual's hazardous materials endorsement if the Transportation Security Administration serves the state with a determination of threat assessment.
7. No written requests for regulatory analysis have been filed by the governor or by any agency. The rule amendments and new rules are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
 8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
 9. A constitutional takings assessment was prepared and is attached to this report.
 10. These rules were not adopted as emergency (interim final) rules.

Thank you for the opportunity to present these changes to you today.

REGULATORY ANALYSIS

The North Dakota Department of Transportation and the Drivers License & Traffic Safety Division believe that proposed amendments to Chapter 37-10-01 and new Chapter 37-10-03 will not have an impact on the regulated community in excess of \$50,000. There are no administrative or other costs required of small entities and there is no effect on state revenues. The proposed amendments and new chapter are being written for clean-up purposes and to conform to current federal mandates.

SMALL ENTITY REGULATORY ANALYSIS

The North Dakota Department of Transportation and the Drivers License & Traffic Safety Division believe that proposed amendments to Chapter 37-10-01 and new Chapter 37-10-03 do not have a substantial small entity regulatory impact. The proposed amendments and new chapter are being done for clean-up purposes and to comply with federally mandated rules under the Motor Carrier Safety Improvement Act of 1999 and the USA PATRIOT Act enacted on October 25, 2001.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

The North Dakota Department of Transportation and the Drivers License & Traffic Safety Division believe that proposed amendments to Chapter 37-10-01 and new Chapter 37-10-03 have no adverse economic impact on small entities. The proposed amendments and new chapter are being done for clean-up purposes and to comply with federally mandated rules under the Motor Carrier Safety Improvement Act of 1999 and the USA PATRIOT Act enacted on October 25, 2001.

TAKINGS ASSESSMENT

The North Dakota Department of Transportation and the Drivers License & Traffic Safety Division believe that proposed amendments to Chapter 37-10-01 and new Chapter 37-10-03 will not result in the taking or limit the use of private real property.