

June 2010

OVERWEIGHT VEHICLE ENFORCEMENT FEES AND EXTRAORDINARY ROAD USE FEES

This memorandum provides information regarding the collection of fees by the Highway Patrol from the enforcement of vehicle weight laws, including the collection of extraordinary road use fees.

OVERWEIGHT VEHICLES - ENFORCEMENT FEES

North Dakota Century Code Chapter 39-12 provides for the regulation of motor vehicle weight, height, and width. The chapter allows state and local authorities to classify highways for weight and load capacities and to issue permits for vehicles that exceed the size and weight limits. Section 39-12-05 details vehicle weight limitations on the interstate roadway system while Section 39-12-05.3 details vehicle weight limitations on roadways other than the interstate roadway system. Attached as [Appendix A](#) is a copy of the sections.

The owner or operator of a vehicle operating without a permit as specified by Chapter 39-12 is to be assessed a fee of \$100. All other violations of Chapter 39-12 require the owner to be assessed a \$20 fee. Fees collected from violating these provisions are deposited in the common schools trust fund. The table below details the collection of enforcement fees by the Highway Patrol for vehicles that violated overweight vehicle permits as provided in Sections 39-12-05 and 39-12-05.3:

| Highway Patrol Overweight Vehicle Enforcement Fees | | |
|---|-----------------------------|--|
| | 2007-09 Biennium | 2009-11 Biennium (Through April 2010) |
| Number of citations issued by Highway Patrol | 79 | 104 |
| Fees assessed by Highway Patrol | \$1,580 | \$2,080 |

OVERWEIGHT VEHICLES - EXTRAORDINARY USE FEES

Chapter 39-12 provides for the ability of a county state's attorney to file a civil complaint for the purpose of collecting an extraordinary road use fee against the owner of an overweight vehicle which has been operated on a roadway. A vehicle found to have been moved or used upon a roadway that exceeds weight limitations may be impounded by a peace officer. Once impounded, the county state's attorney may file a civil complaint on behalf of the authority having jurisdiction of the road where the violation occurred. However, prior to a complaint being issued, the owner or driver of the overweight vehicle may voluntarily pay the extraordinary road use fee. If the fee is not voluntarily paid, a cash bond in the amount of the extraordinary road use fee and any other costs must be posted to allow the impounded vehicle to be released and the complaint is then heard in district court.

The collection of extraordinary road use fees must be remitted to the State Treasurer to be credited to the state highway fund. The amount of extraordinary road use fees charged to an overweight vehicle varies based on a schedule included in Section 39-12-17. If the extraordinary road use fee is not paid by the owner of a vehicle, the vehicle may be confiscated and sold at a public sale. The table below details the collection of overweight vehicle extraordinary road use fees resulting from enforcement actions by the Highway Patrol:

| Overweight Vehicle Extraordinary Road Use Fee Collections Resulting From Highway Patrol Enforcement Actions | | |
|--|-----------------------------|--|
| | 2007-09 Biennium | 2009-11 Biennium (Through April 2010) |
| Number of violations | 1,665 | 653 |
| Fees collected | \$997,340 | \$442,390 |

The process outlined in statute for filing a civil complaint against the owner of an overweight vehicle is attached as [Appendix B](#).

ATTACH:2

respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.

- e. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].
4. Length limitations do not apply to:
 - a. Building moving equipment.
 - b. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
 - c. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
 - d. Structural material of telephone, power, and telegraph companies.
 - e. Truck-mounted haystack moving equipment, provided the equipment does not exceed a length of fifty-six feet [17.07 meters].
 - f. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of the federal aid primary system as designated by the director, only when federal law requires the exemption.
 - g. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.
 5. Motor homes, house cars, travel trailers, fifth-wheel travel trailers, camping trailers, and truck campers may exceed eight feet six inches [2.59 meters] in width if the excess is attributable to an appurtenance that extends beyond the body of the vehicle no more than six inches [15.24 centimeters] on either side of the vehicle. For purposes of this subsection, the term appurtenance includes a shade awning and its support hardware, and any appendage that is intended to be an integral part of a motor home, house car, travel trailer, fifth-wheel travel trailer, camping trailer, or truck camper.

39-12-05. Weight limitations for vehicles on interstate system. A person may not operate on a highway which is part of the interstate system any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \frac{(LN + 12N + 36)}{N-1}$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. The gross weight may not exceed eighty thousand pounds [36287.39 kilograms].

39-12-05.1. Weight limitations for vehicles on designated highways. Repealed by S.L. 1983, ch. 441, § 3.

39-12-05.2. Interstate weight limitations if permitted by the Congress of the United States. If congressional action occurs authorizing a greater gross weight on the interstate system than allowed under section 39-12-05, a person may operate on an interstate highway a vehicle the gross weight of which is at most the weight allowed by the congressional action.

39-12-05.3. Weight limitations for vehicles on highways other than the interstate system.

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed nineteen thousand pounds [8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W = 500 \frac{(LN + 12N + 36)}{N-1}$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a

nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.

4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
6. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader if the weight of a single axle does not exceed twenty-two thousand pounds [9973.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled agricultural chemical applicator if the weight of a single axle does not exceed twenty-two thousand pounds [9973.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway patrol shall issue a seasonal permit for the commercial movement of vehicles exempted by this subsection. The seasonal permit issued under this subsection or under subdivision d of subsection 1 of section 39-12-04 entitles an individual with the permit to operate a vehicle as allowed by either of these provisions. A seasonal permit issued under this subsection is subject to the requirements of subdivision d of subsection 1 of section 39-12-04.
7. The weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption but the weight limitations in section 39-12-05 do apply to that equipment. For every vehicle approved for exemption, the highway patrol shall issue a nontransferable bridge length permit valid for a single trip or a calendar year.

39-12-06. Limitations on extending of load beyond side of motor vehicle. No motor vehicle carrying any load beyond the lines of the left fenders of such vehicle nor extending more than twelve inches [30.48 centimeters] beyond the line of the fenders on the right side of such vehicle may be operated on the highways, except as permitted by section 39-12-04. The department of transportation or the highway patrol shall have authority to revoke permits when such holder violates or abuses the privilege or conditions of permit.

39-12-07. Peace officers may weigh vehicle to determine load - Decreasing gross weight of vehicle. Every police officer, including members of the state highway patrol, having reason to believe that the weight of a vehicle and the load carried thereon is unlawful, may weigh such vehicle and load or have the same weighed either by means of portable or stationary scales, and for that purpose the officer may require the vehicle to be driven to the nearest scales. Such officer may require the driver of such vehicle immediately to unload such portion of the load

as may be necessary to decrease the gross weight to the maximum allowed by the provisions of this chapter.

39-12-08. Penalty for violation of chapter. A person operating a motor vehicle or the owner of the motor vehicle being operated without a permit as specified in this chapter must be assessed a fee of one hundred dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of twenty dollars. Violating the conditions of any permit type automatically voids the permit.

39-12-09. Unlawful to violate provisions governing size, weight, or construction of vehicles - Size and weight specified in this chapter lawful through state - Penalty. It is unlawful for any person to drive or move, or for the owner to cause or knowingly to permit to be driven or moved, on any highway, any vehicle or vehicles which are not constructed as required in this chapter nor according to the rules and regulations of the director adopted pursuant to the provisions of this chapter. The maximum size and weight of vehicles specified in this chapter are lawful throughout this state, except as they may be limited by virtue of specifications made pursuant to the other provisions of this chapter. Any person who violates any of the provisions of this section must be assessed a fee of twenty dollars.

39-12-10. Flag or light to be displayed at end of load. Repealed by S.L. 1963, ch. 283, § 20.

39-12-11. Impounding overweight vehicle. Any vehicle found to have been moved or used upon any highway, street, or road in this state at a weight exceeding the limitations as specified in any order, ordinance, or resolution issued under section 39-12-03 or as limited by section 39-12-05 may be impounded by any peace officer and taken to a warehouse or garage for storage.

39-12-12. Impounding receipt - Information. A receipt must be given by the officer impounding the vehicle, to the driver or person in charge of such vehicle. Such receipt must identify as nearly as possible, the owner of the vehicle and cargo, the driver or person in charge of such vehicle, the cargo, the place the vehicle is to be stored during impoundment, the weight of the loaded vehicle and the name and address of the impounding officer. Information as to the owner of the vehicle and cargo must be obtained from the driver or person in charge of the vehicle.

39-12-13. Impounding notice - Perishables. The impounding officer shall notify the owner or owners, if they can be found, by wire or telephone, of the impoundment and the charges involved. If the cargo consists of perishables, the impounding officer shall use reasonable diligence in assisting the operator or owner in finding suitable storage facilities for such perishables, but all risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle.

39-12-14. Civil complaint. The state's attorney of the county where such vehicles are impounded, shall, if no settlement is made under section 39-12-14.1, immediately prepare and file a civil complaint on behalf of the authority having jurisdiction of the road whereon the violation occurred, for the purpose of recovering charges for the extraordinary use of the highways, streets, or roads of this state.

39-12-14.1. Voluntary settlement of extraordinary road use fee charges. Before the complaint is issued pursuant to section 39-12-14, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction of the road whereon the violation occurred. The extraordinary road use fees must be remitted to the state treasurer to be credited to the highway fund.

39-12-15. Mailing complaint. A copy of the complaint must be served upon the driver or person in charge of the vehicle and a copy must be sent by registered or certified mail to the owner of the vehicle, if the address of such owner is known.

39-12-16. Cash bond - Holding. Unless a cash bond is furnished in an amount sufficient to cover the charges for extraordinary use of highways, streets, and roads, as provided in section 39-12-18, together with the costs which may be collectible under any subsequent settlement made pursuant to section 39-12-14.1, said vehicle must be held until a trial of the case can be had before the district court.

39-12-17. Trial - Charges. At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows:

1 to 1,000 pounds [.45 to 453.59 kilograms] of excess weight = \$20

1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = \$40

2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = \$60

3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = \$140

4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = \$220

5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = \$305

6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = \$380

7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = \$495

8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = \$575

9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = \$655

10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = \$1,100

11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = \$1,200

12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = \$1,300

13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = \$1,680

14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = \$1,800

15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = \$1,920

16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = \$2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = \$2,700

18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = \$2,850

19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = \$3,000

20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = \$4,200

21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = \$4,400

22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = \$4,600

23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = \$4,800

24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = \$5,000

25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = \$5,200

26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = \$5,400

27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = \$5,600

28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = \$5,800

29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = \$6,000

An additional charge of \$200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

39-12-18. Payment of charges - Confiscation - Sale. If the charges and costs as provided in section 39-12-17 are not paid immediately from a cash bond previously posted or other cash payment, the judge shall order the vehicle confiscated and sold by the sheriff of the county at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under the provisions of sections 39-12-11 through 39-12-22.

39-12-19. Payment - Effect. The payment of charges may not be construed as a payment for the future use of highways, streets, or roads by vehicles carrying excess loads.

39-12-20. Proceeds of sale - Continuing appropriation. The proceeds of sale must be deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to section 39-12-17 after paying the costs to the county. An amount equal to the costs of the proceedings, including attorney's and witness fees and costs, is appropriated on a continuing basis out of the funds collected to the

county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges is appropriated on a continuing basis out of the funds collected to be paid to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.

39-12-21. Penalty. Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of a class B misdemeanor.

39-12-22. Permissible loads - Exceptions. When any motor truck, truck tractor, or trailer is operated upon the public highways of this state carrying a load in excess of the maximum prescribed under the provisions of sections 39-12-03 and 39-12-05 or other maximum weight limitations prescribed by law, the load must be reduced or shifted to within such maximum limitations before being permitted to operate on any public highway of this state; provided, however, that any such vehicle carrying a load of livestock is exempt from the limitations prescribed in section 39-12-05, relating to the carrying capacity of any wheel, tire, axle, or group of axles when excessive weight is caused by a shifting of the weight of the livestock. All material unloaded as required by this section must be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

39-12-23. Governor's order authorizing excess limits. The governor of this state is hereby authorized, by order of general application, to permit and prescribe definite excess limitations as to size and weight for the operation of motor vehicles in emergencies and to meet unusual conditions for the general welfare of the public.

The operation of such vehicles, in accordance with the governor's order, does not constitute a violation of the statutes relative to limitations on sizes and weights.