

Negotiated Rulemaking Stakeholder Comments with ITD Responses

Categorized comments followed by full responses for each:

- 1) Safety Inspections and Enforcement – (Owner Inspections)
- 2) Safety Inspections and Enforcement – (Law Enforcement Inspections)
- 3) Equipment / Overlegal Loads
- 4) Driver qualifications
- 5) Truck permitting
- 6) Road characteristics
- 7) 129K Regional Harmonization
- 8) Support for existing regulations/Rules
- 9) “Overlegal” terminology
- 10) Rulemaking process
- 11) Rulemaking scope
- 12) Enforcement and penalties
- 13) Reasonable access
- 14) Data collection
- 15) Funding
- 16) Local authority

1) Safety inspections and enforcement – owner inspections:

Comments - Comments were received from Law Enforcement encouraging the Department to adopt Federal Motor Carrier Administration Rule, 49 CFR Part 396.17 and 396.19, relating to Owner Inspections of Commercial Motor Vehicles (CMV) operating under overlegal permits. These provisions establish requirements for owners and operators to perform and certify annual safety inspections of vehicles under their control.

ITD Response – ITD agrees with suggestions to strengthen inspection compliance, and proposes adoption of a requirement that all overlegal permit applicants be required to self-certify that they have performed inspections in accordance with 49 CFR Part 396.17 and 396.19, prior to operating under an approved overlegal permit.

Proposed language has been inserted in Administrative Rule 39.03.12 – Rules Governing Safety Requirements of Overlegal Permits to state the proper inspection requirements for all vehicles that are operating under the authority of an overlegal permit issued by the Department.

This new requirement will not impact those operating under an agricultural exemption.

2) Safety inspections and enforcement – law enforcement inspections:

Comment – Several comments were received from industry stating the current number of inspections conducted on commercial motor vehicles (CMV) is sufficient. However, these comments were inconsistent with ISP’s suggestion that the current inspection/enforcement program be enhanced as identified in response

to #1 above. Additionally, other commenters expressed concern with vehicle safety enforcement and compliance.

ITD Response – ISP is the lead agency for commercial vehicle highway safety and designated as the lead agency for the Federal Motor Carrier Safety Assistance Program (MCSAP), which enables grant recipients to promote CMV safety. CVS is primarily funded through federal grants. There are four major levels of vehicle inspections performed by ISP. Three of the four inspections include inspection of the vehicle braking systems. ISP also does full vehicle safety inspections, which include all safety components on the CMV's listed in 49 CFR Part 393. These inspections normally average 45 minutes to complete and are conducted at roadside or at POE's. A CVSA inspection is submitted to FMCSA for tracking and to keep drivers and carriers in compliance with regulations.

POE inspectors have limited peace officer authority outlined in IC § 40-510 and 511. They conduct driver and walk around safety inspections. Inspections are conducted at POE's and pertain to driver safety, credentialing, limited vehicle safety, size and weight and permits. These inspections average 10 – 15 minutes.

Additional enhancements to the CMV inspection program could be accomplished with additional funding for more inspections of CMVS. However, based upon the low accident rate attributable to vehicle malfunctions, such does not appear warranted.

Based on these low accident rates, we believe the ISP led inspection process in its current form is valid and effective.

Additional funding for an enhanced inspection program would need to be a policy decision and go through the legislative process and would not be appropriate in an administrative rule change.

3) Equipment/overlegal loads:

Comment – There were multiple comments submitted on improving the functionality and safety of Commercial Motor Vehicles (CMV) through emerging safety technology. Comments also included suggestions to modify existing rules to require various vehicle safety technologies, focusing on both current and emerging technologies. Examples of current safety enhancements technologies include such things as ABS braking systems, whereas emerging technologies include: lane departure, stability control, rear cameras, and crash avoidance systems.

ITD Response - Currently, the Federal Motor Vehicle Safety Standards (FMVSS) contain minimum requirements for brake systems. For example, 49 CFR Part 571.121 specifically addresses air brake systems used on commercial motor vehicles. Beginning in the 1990's, the FMVSS phased in additional brake requirements for commercial motor vehicles, from automatic slack adjusters, adjustable brakes, ABS brake systems and minimum thicknesses for brake linings and pads. In addition, the Commercial Vehicle Safety Alliance (CVSA) has kept the *North American Standard Out-Of-Service Criteria* updated annually to reflect any changes to brake regulations.

Requiring any of the additional vehicle safety emerging technologies stated by commenters, such as crash avoidance technologies, would exceed current federal safety standards and would not be in harmony with our surrounding states.

However, for the brake systems to remain effective, they need to be maintained to the FMVSS applicable standards for the year the commercial motor vehicle was manufactured. ITD has added proposed language to ITD administrative rule 39.03.22 that requires brakes be maintained to the FMVSS standard in effect at the time the commercial motor vehicle was manufactured, which will enhance safety.

4) Driver qualifications:

Comment – Comments were received regarding driver training, age requirements, and enhanced driver qualifications for drivers of Long Combination Vehicles (LCV): suggestions included requirements for minimum driver qualifications and/or certifications such as CDL holders operating 129K vehicles be at least 25 years of age and have two years of doubles/triples experience before being eligible to operate up to 129K. Specifically, ISP proposed adopting the FMCSA rules that govern the training requirements for LCV's as contained in 49 CFR Part 380.

ITD Response - The requirements for 49 CFR Part 380 include: 1) A driver who wishes to operate an LCV shall first take and successfully complete an LCV driver-training program that will provide the knowledge and skills necessary to safely operate an LCV and 2) Include a grandfather clause for those drivers who meet the requirements listed in 49 CFR 380.111. To qualify the driver must provide proof of operating an LCV for minimum of two years prior to the application for LCV "T" endorsement.

The information below outlines the current process/requirements for obtaining a CDL with a doubles/triples endorsement. Current Idaho code complies with the laws set forth by the Federal Motor Carrier Safety Administration (FMCSA) with regard to minimum driver training and qualifications for the operation of LCV.

Current LCV licensing requirements include:

- The Idaho CDL manual provides the FMCSA required reading material that all applicants for a "T" endorsement (an endorsement on a CDL to pull double and triple trailers) must study, and the test for that material is administered by the Idaho county sheriff's driver licensing offices.
- No applicant will be issued a "T" endorsement on their CDL until he or she passes the required test.
- Idaho drivers must obtain a Class A CDL before the "T" endorsement can be added to the CDL.
- Under current rules, most drivers with a "T" Endorsement will also be required to undergo LCV training by their employer before operating a long commercial vehicle, per FMCSA rules. The training outlined for LCV operators **is not** part of the testing/training required by FMCSA to be administered by the Idaho Transportation Department or its agents at this time.
- The following Federal Motor Carrier Safety Regulations (FMCSR) specify the additional training and certification requirements an employer and driver must follow before the driver can legally operate most vehicles towing double and/or triple trailers.
 - §380.113 – Employer responsibilities
 - §380.201 – General requirements
 - §380.203 - LCV Doubles
 - §380.205 – LCV Triples
- Per Idaho State Police, statistics nationwide have proven that 87% of crashes are caused by driver error.
- Currently Idaho code allows an 18-year-old driver the ability to get a class A, B or C CDL.

- Any driver with a current CDL can take a written test to receive a double or triples endorsement. Upon receiving the endorsement the driver is allowed to begin operating the LCV's without a skills test.

Implementation of a training program as listed in 49 CFR 380 would better train and qualify drivers to operate over-legal LCV's. It would also help insure compliance with FMCSA . It is anticipated that ISP will be adopting 49 CFR Part 380 and so, ITD has adopted it by reference in IDAPA rule 39.03.12.

5) Truck permitting:

Comment – Various comments and concerns were received concerning the truck permitting and information process. These comments and concerns included:

- A. **Automated Permitting System** - Need by industry for continuous access to automated permitting system. There is a need for ITD to acquire a new automated permitting system that would allow customers to obtain overlegal permits 24/7 to ensure mobility of goods and services.

ITD Response: Currently ITD utilizes a system that doesn't allow continuous 24/7 access for industry to obtain any single trip overlegal permits. Currently, industry can obtain annual overlegal permits 24/7 through the website [ACCESS Idaho.gov](http://ACCESSIdaho.gov). However, industry would like to be able to obtain single trip permits in the same manner. ITD agrees this would be a desirable improvement and is working to develop a computerized system.

- B. **Increase maximum Dimensions for Ag Permits** – Request by implement dealers to increase overlegal permits for implements of husbandry with maximum annual dimensions of 19'11" wide and 16' high. Industry proposes that this modification to rule would increase efficiency of movement, eliminating the sometimes cumbersome requirements of single trip permits.

ITD Response: ITD modified Administrative Rule 39.03.19, Rules Governing Annual Overlegal Permits, in the 2016 Legislature to increase annual overlegal permits to a new maximum width of 16' from 14'6" due to a similar request by the agricultural industry at that time. ITD believes this recent change, at industry request, helps address industry needs while maintaining safety. Staff believes that allowing widths of greater than 16 ' requires additional monitoring and oversight on a case by case basis to ensure safety for the operator and the public using the highway.

- C. **Update ITD Permit Manual** - Need to update the ITD Permit Manual. Several sections of the manual are outdated and difficult to read and understand.

ITD Response: Most recent Permit Manual update was performed in 2013. ITD concurs with comment and Permit Manual will be updated.

- D. **Discourage Long-Term Use Of Overlegal Permits** - Long term use of overlegal permits should be discouraged, especially for trucks that circumvent size and weight restrictions.

ITD Response: Permits encourage compliance with size and weight requirements. Currently ITD has the ability to revoke overlegal permits as per Administrative Rule 39.03.23, Rules Governing Revocation of Overlegal Permits. Permits can be revoked for many violations of the permit such as: failure to travel on

designated routes, proper safety and travel requirements, and exceeding proper weight limitations. Any commercial driver violating a permit – of any kind – is subject to criminal penalties.

- E. **Improve Color Coded Route Map** - Need to improve color coded maps and provide the proper web links to each route throughout Administrative Rules. ITD should improve color coded maps by utilizing one color for each route designation.

ITD Response: Color coded maps are detailed on ITD’s website. They are also required to be attached to the overlegal permit which a customer must have in their possession while transporting an overlegal load. As ITD continues to work with local jurisdictions on permitting improvements, consideration will be made to potential web site changes.

- F. **Better Enforcement of Overlegal Permits** - Need for specific, measurable and attainable method of verification and enforcement to ensure that overweight permitted vehicles are complying with the permit requirements and designated routes.

ITD Response: Enforcement and compliance metrics detailing verification and enforcement of permits are currently collected, maintained and reported to the Federal Highway Administration. ITD independently reviews the data and uses it to follow up with repeat offenders and offer training or other potential solutions. Current Idaho code and IDAPA rules adequately provide enforcement tools.

- G. **Single State-Wide 129K Permit** - Need for a single 129K permit to allow travel on all state and local roads. It is time consuming to obtain a separate 129K permit from each local jurisdiction the hauler wishes to travel. A single 129K permit for all designated routes in the state would create efficiency and cost savings.

ITD Response - ITD concurs that this concept has merit and desires to work with local jurisdictions to implement a statewide permitting system. A single statewide permitting system could be implemented in a variety of ways. A single statewide permitting system would streamline permitting for commercial carriers and enhance commerce, while also improving safety by allowing law enforcement to better enforce commercial traffic on local roads. In order to continue the dialogue with local jurisdictions, ITD staff has drafted three options for statewide permitting.

- H. **Minimum Power Axles** - Requests that a section be added in 39.03.22 that requires all power units on 129K trucks to have a minimum number of powered axles (2) to reduce the impacts to pavement while the vehicle is accelerating to operational speed or while it is pulling up a steep grade.

ITD Response: The greatest impact to road infrastructure is vertical axle weight, which is not affected by the number of power axles. Requiring a minimum of two powered axles may extend pavement life and decrease maintenance to some degree. However, to mandate this requirement also would hinder commerce, impede economic opportunity, and cause Idaho to be in disharmony with surrounding states.

- I. **Minimum Axles Required** - Modification requested to require a 129K permitted vehicle to have a minimum of 10 axles when operating at the maximum weight limit. Requiring a minimum of 10 axles on 129K vehicles is consistent with previous truck schematics/ information presented by industry.

ITD Response - Current permitted vehicles operating on 129K designated highways can achieve a weight above 105.5K up to 129K by complying with Idaho Code section 49-1001 which mirrors Federal Formula

B. While previous overlegal permit applications have included schematics/information illustrating 10 axle vehicle combinations, Idaho Code section 49-1001 does not mandate 10 axle vehicle combinations. To mandate this requirement would require a statutory change. Federal Formula B mandates maximum gross weight for a commercial motor vehicle based on axle number and spacing. The Department believes that Federal Formula B provides sufficient control over axle weights to protect infrastructure.

6) Road characteristics:

Comment – Numerous comments were received regarding characteristics which should be used in the designation of state 129K routes. Below are the characteristics proposed along with the Department’s responses.

ITD Response –

A. Sight distance of 400ft for vehicles traveling at 60 mph and 200 feet for vehicles traveling at 30 mph:

Sight distance is a safety concern that affects all vehicle types, and may cause more challenge for passenger car motorists who are generally closer to the ground where sight distance is more limited. While sight distance causes challenge for motorists, it is not an appropriate reason to prevent any vehicle type from using a highway. Attempts to use sight distance as criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. Rather, engineering tools along with driver responsibility are the best approach to safely navigate a vehicle in limited sight distance situations. In concert with federal safety guidelines, ITD reduces speed limits in some situations where sight distance is limited – such as highways with significant curvature. Federal guidelines also call for warning signage in certain areas to warn motorists of limited sight distance. Additional tools include signage and/or roadway striping for no passing zones and flashing lights. ITD applies relevant professional and technical safety standards, as the basis for decision-making for mitigating limited sight distance locations.

B. Minimum 2ft shoulder on 129k routes:

Shoulder width is a significant safety issue. However, it is not an appropriate criteria to use to prevent any vehicle type from using a highway. Attempts to use shoulder width as a criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining the location of shoulder widths.

Additionally, shoulder width is an issue that relates more to the width and length of vehicle rather than weight and a large portion of commercial trucks (including 129 k trucks) have standard widths of eight and a half feet, and similar lengths. Therefore any effort to require certain shoulder widths for travel, should apply to all relevant vehicle types.

ITD applies relevant professional and technical safety standards, as the basis for decision-making for mitigating limited shoulder width locations. For example, ITD reduces speed limits and/or uses warning signage in some situations where shoulder width is limited.

C. Passing lanes required where grades are 5% or greater and longer than 2 miles:

Whether it's a busy arterial or rural, mountainous grade, passing lanes can play an important role in safety for all users of our highways. However, passing lanes should not be a requirement for any certain vehicle type to travel. Attempts to use passing lanes as criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining the location of passing lanes.

Idaho administrative rules address the power to weight ratio of all trucks (regardless of weight) by requiring all trucks (including up to 129K) to be capable of maintaining uphill speeds of no less than 20 mph.

D. Runaway truck ramps required where grades are 5% or greater and longer than 2 miles:

Need for runaway truck ramps (escape ramps) are warranted in cases where runaway trucks could reach downhill speeds of 80MPH without leaving the roadway. Typically runaway truck ramps are used on long, relatively straight grades. Attempts to use runaway truck ramps as criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining the location of runaway truck ramps.

Runaway truck ramps are already constructed at all known locations on the state highway system where warranted. While the gross weight of trucks is a factor in designing the length and depth of the ramp, it is not a factor used in determining the need for one. When new 129K routes are being considered, runaway truck ramps are reevaluated for use by vehicles up to 129K.

E. Provide adequate Chain-up and Chain-down areas:

It is important to note that a permit is required for all overlegal loads. Pursuant to existing administrative rule, these permits do not allow loads to operate in adverse weather conditions.

Chain-up and chain-down locations are determined based on documented instances of trucks losing traction during winter conditions. Should these instances continue in frequency, ITD would investigate the feasibility of additional chain-up and chain-down sites at these locations. Attempts to use chain-up and chain-down areas as a criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining the location of chain-up and chain-down areas.

F. Provide reader boards during adverse weather conditions:

It is important to note that a permit is required for all overlegal loads. Pursuant to existing administrative rule, these permits do not allow loads to operate in adverse weather conditions.

ITD typically uses reader boards to advise all motorists regarding road conditions. Many highways on the State system have Dynamic Message Signs permanently installed to provide road users with information on driving conditions. Portable Changeable Message Signs are frequently placed in advance of difficult driving conditions in order to give motorists advance warning or information. In addition to reader boards, Idaho 511 Traveler information is also available to all road users. Special information for truckers is kept up to date on the 511 system and a variety of customized alerts and notifications can be sent to users.

Attempts to use required reader boards as a criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining the location of reader boards.

G. Set maximum speed limits of 65MPH on 129k routes:

Per recent Idaho Code modifications, 129K vehicles are allowed on Idaho's Interstate Highway system. Truck speed limits on this system are as high as 70MPH and other vehicles are allowed to go 80MPH. Per section 49-201, Idaho Code, speed limits are set in accordance with speed studies and engineering analysis. Reducing the speed limit below the warranted speed can actually reduce rather than enhance safety. It would be inappropriate to set speed limits for commercial motor vehicles in administrative rule.

Attempts to use speed limit as a criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other commercial motor vehicles for the purpose of setting speed limits. Speed limits are set considering the safety of all commercial vehicles.

H. Seasonal reduction in load limits (spring break-up):

Idaho Code section 49-1005 provides authority to the Idaho Transportation Board to reduce allowable weight, size or speeds of vehicles traveling on state highways when in the opinion of the Board failure to reduce vehicle weight, size or speed will cause damage to the road by reason of climatic or other conditions or will interfere with the safe and efficient use of the highway by the traveling public.

129k trucks have a reduced axle weight compared to other trucks, so it has less impact on pavements. Attempts to use seasonal reduction in load limits as criteria to restrict passage of only 129k commercial motor vehicles would not be a consistent or objective standard. There is no basis to distinguish 129K vehicles from other vehicles for the purpose of determining seasonal reductions.

Additionally, IDAPA 39.03.14 provides administrative rules applicable to vehicle size, weight and speed limitations during spring break-up season.

I. Northern Idaho roads are not suitable for 129K designation:

Proposals for 129K route designations are reviewed by the Department based upon road and bridge structural integrity engineering standards, as well as public safety engineering standards. Engineering analysis is applied in the selection of appropriate routes for 129K configurations based on State and Federal Highway Standards. This analysis effectively applies to all routes regardless of location within the state. Routes will not be designated unless they meet engineering standards. Each 129K route application on the state highway system will be reviewed to determine the suitability for 129K vehicles. The analysis of the route addresses the interaction of 129K vehicle combinations with roadway characteristics, bridge capacity and other safety concerns.

7) 129K regional harmonization:

Comment – Some stakeholders said regulatory requirements among the states regarding issuance of 129K permits should be uniform from state to state whenever possible.

ITD Response - ITD proposes changes to Administrative Rule 39.03.15, Rules Governing Excess Weight Permits for Reducible Loads, in order to comply with Idaho Code § 49-1004B, which allows 129K vehicles on the interstate. Section 49-1004B details that Idaho Interstate Highways (I-15, I-84, I-86, I-90 and I-184) are identified as “designated routes” allowing movements up to 129K, which will enhance harmonization with many neighboring states which have allowed 129K motor vehicles for years.

8) Support for existing regulations/rules:

Comment – Various stakeholders expressed support for existing rules and regulations. Several respondents commented current rules are sufficient for 129K permits and current exemptions in federal and state statutes should remain as is.

ITD Response – Several respondents commented that the current laws and rules sufficiently provide safety on Idaho’s roads, and that the current exemptions in federal and state statutes should remain as is. While ITD understands this perspective, the Department believes the proposed rule changes being considered are reasonable and will enhance safety.

9) “Overlegal” terminology:

Comment – Several commenters said designating vehicles more than 80K as “over-legal” insinuates they are not legal. They feel “over-legal” gives a negative and false connotation to vehicles more than 80K, including 129K vehicles which are legally permitted to travel on designated routes.

ITD Response – The term “over-legal” does not mean illegal. It means a shipment requires an “over-legal” permit if it is more than 8.6 feet wide, has a height of more than 14 feet, or weighs more than 80K. ITD agrees the term “over-legal” may not be the most accurate nomenclature and staff is currently researching alternative designations.

10) Negotiated rulemaking process:

Comments – Some stakeholders said the negotiated rulemaking process was confusing and asked why a draft rule was not presented at the May 25th public hearing. Additionally, they have requested ITD author and publish draft rule(s) as soon as possible. There was also concern regarding the Department’s timeline and hearing schedule. Furthermore, it was noted the Department should incorporate safety concerns and information from past legislative hearings into its rulemaking process.

ITD Response - The negotiated rulemaking process was designed to be flexible and fluid. It is conducted with interested parties, in order to improve the final rule and expedite the rulemaking process. This negotiated rulemaking process allows ITD to leverage information, knowledge, expertise and technical abilities from outside stakeholders. Negotiated rulemaking for permitted trucks was prompted by a letter from Governor Otter relating to SB1229 and 129K Interstate route designations. Holding the first hearing prior to proposing any rule modifications was intentional, with the goal of finding all available possible topics and ideas for improvement.

Negotiated rulemaking is only the first part of this rulemaking process. Once the Idaho Transportation Board approves draft rules, the Department will initiate the formal proposed rulemaking process. Stakeholders and the public will have the opportunity to comment on the draft rules during the proposed rulemaking process.

11) Negotiated rulemaking scope:

Comment – Many commenters said draft rules stemming from this negotiated rulemaking should not be any more stringent than current federal regulations and that current FMCSA regulations relating to drivers, vehicles, and safety are sufficient. Commenters also expressed concern that when it comes to driver qualifications, vehicle/equipment and safety issues, the Federal Motor Carrier Safety Administration (FMCSA) should be the controlling authority.

ITD Response - ITD was asked to give a thoughtful and broad review of all truck safety on Idaho's roads as part of this negotiated rulemaking process. The department included a thorough outreach to key stakeholders and users of the highway system to hear concerns and suggestions before determining potential improvements. The proposed improvements do not impugn the authority of the FMCSA, nor are they more stringent than Federal Regulations.

12) Enforcement and penalties:

Comment – Numerous comments were received expressing the need for enhanced enforcement and penalties for vehicles violating overlegal permit requirements or conditions.

A. Set stiff fines and penalties for those responsible for loading, as well as those operating commercial permitted vehicles illegally:

ITD Response: Increasing penalties for the vehicle operators violating requirements will require legislation. Currently, enforcement personnel are able to cite drivers of illegally operated permitted vehicles.

B. Out-of-Service designations should be strictly enforced due to imminent safety hazard:

ITD Response: To strengthen understanding of certain permit revocations, ITD has inserted proposed language in Administrative Rule 39.03.23, Rules Governing Revocation of Overlegal Permits, which provides for overlegal permit revocation due to an Out-of-Service order by FMCSA.

C. Regular evaluations of speed limits and strict enforcement of violations involving passenger vehicles and trucks:

ITD Response: All speed limits on highways under the jurisdiction of the Department are routinely evaluated and if necessary subject to a speed study per the provisions of the Idaho Code. If a section of highway is not posted with the appropriate safe speed limit, as indicated in the engineering speed study, the speed limit is adjusted accordingly.

Provisions for increasing the enforcement of motor vehicle laws are not proper subject matter for administrative rulemaking. The Idaho Code provides which agencies have jurisdiction over motor vehicle and traffic enforcement.

D. Increase inspections on routes that trucks use to bypass or avoid Port-of-Entry (POEs):

ITD Response: Additional technologies could assist POE staff to increase inspections and deter bypassing of fixed and roving POE sites. POE has incorporated technologies in remote locations for virtual weigh stations and will continue to research and implement such technologies as they become available and funding allows.

E. Incentivize legal operation through possible tax breaks for legally operated permitted vehicles:

ITD Response: Compliance is currently being incentivized by the POE through the installation and use of Weigh in Motion/Automatic Vehicle Identification systems allowing compliant size, weight and credentialed carriers to legally bypass open fixed POE sites. This increases the compliant vehicle's efficiency and rewards the driver for being compliant. A reduction in permitted vehicle registration or permit fees for compliance would need to be researched and would require statutory modifications.

13) Reasonable access:

Comment – Comments were received relating to the Federal “Reasonable Access” requirement which allows commercial motor vehicles to travel up to one mile off of their permitted route in order to load or unload and to obtain essential services such as food, lodging, repairs, and fuel. Comments focused on 1) not allowing this requirement to be used to circumvent size and weight limits on local roads, and 2) not creating congestion in urban areas by allowing permitted vehicles to travel on local roads.

ITD Response - The reasonable access exemption is part of the Federal law and may not be modified or infringed upon by an ITD administrative rule.

Federal law provides:

(a) No State may enact or enforce any law denying reasonable access to vehicles with dimensions authorized by the STAA* between the NN and terminals and facilities for food, fuel, repairs, and rest.

(d) No State may enact or enforce any law denying access within 1 road-mile from the National Network using the most reasonable and practicable route available except for specific safety reasons on individual routes.

(h) States shall ensure compliance with the requirements of this section for roads under the jurisdiction of local units of government.

23 CFR 658.19 (*State Transportation Assistance Act).

Idaho State Law provides:

Semitrailers operating on routes which are a part of the national network as set forth in 23 CFR 658, on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network

and state highways as set forth by policy and approved by the transportation board shall not exceed a length of 53 feet.

I.C. §49-1010(3).

Conclusion:

The reasonable access exemption is part of the Federal law and may not be modified or infringed upon by an ITD administrative rule. Both Federal Law and State Law allow commercial motor vehicles to travel up to one road mile off their designated state or local routes for essential services.

14) Data collection:

Comment – Comments were received relating to the collection of data for overlegal violations. Specifically by having violation data available, enforcement personnel can focus on high risk corridors. POE data relating to compliance should be collected and reviewed on a regular basis.

ITD Response - Currently, Port of Entry staff submits an annual review to the Federal Highway Administration (FHWA) which is evaluated for the effectiveness of Idaho's size and weight program.

Vehicles are currently screened at POE's for the carrier's safety score which is based on the FMCSA Compliance, Safety, Accountability (CSA) program. The CSA program collects and evaluates carrier and driver data to identify carriers with high-risk behaviors and measure a carrier's safety performance using inspection and crash result data.

On an annual basis, ITD reports size and weight enforcement efforts (citations, warnings, and the number of vehicles weighed) to FHWA for evaluation of Idaho's size and weight enforcement program. A list is compiled of the carriers with the 10 highest violation rates who are then notified of the opportunity to have POE staff assist and provide education in an effort to increase company compliance. POE staff also evaluates commercial traffic patterns on state highways and Interstates through traffic survey and analysis monitoring stations. POE staff also assigns assets to ensure roadside enforcement is utilized at locations where there is a high violation rate.

15) Funding:

Comment – Comments were raised by several local jurisdictions/associations regarding the impact heavier loads have on road and bridge infrastructure and the resulting costs for maintenance and repair for city and county road districts. These comments suggested increasing overlegal fees and passing the increase along to local jurisdictions.

ITD Response - Any change to heavy truck fees is a policy decision and a legislative prerogative. This issue is not appropriate for administrative rulemaking.

Heavy truck operators who travel in Idaho currently pay for road use through a combination of registration fees, diesel fuel tax and in some cases, permit fees. These fees are set in statute as a directed policy of the legislature. Registration fees are based on truck weight and miles traveled in the state. For example, if the truck types shown below traveled between 20,001 – 35,000 miles in the state, the operator would pay the following annual registration fees:

80,000 truck	\$1,700
105,500 truck	\$2,358
129,000 truck	\$2,965

Registration fees and fuel taxes go to the Highway Distribution Account which is divided, per statute, among the Idaho Transportation Department (57%), Local Jurisdictions (38%) and Idaho State Police (5%). Additional fees approved by the 2015 Idaho Legislature are split 60% to the Idaho Transportation Department and 40% to local jurisdictions.

Permit fees cover ITD administrative costs. They are set in IDAPA 39.03.21, and are based on size and weight due to an increase in the Department’s analysis costs. These fees are retained by the transportation department. Permit fees for non-reducible loads are set in Idaho Code 49-1004, and include a road use fee which goes to the Highway Distribution Account. The road use fee is based on the vehicle weight, number of axles and miles traveled.

16) Local authority:

Comment – Comments were received expressing concern that the negotiated rulemaking process might be used to usurp the authority of local jurisdictions over their roads and highways. The concerns focused on the Counties and Highway Districts retaining their exclusive authority to issue permits and designate routes for 129K vehicles within their jurisdictions.

ITD Response - Idaho Code is clear that authority over the roads and highways within local jurisdictions is held exclusively by the local authority. Specific to 129K routes and permits, Idaho Code section 49-1004A(3) clearly provides for the exclusive jurisdiction of local counties and highway districts to designate 129K routes and issue permits for 129k route travel over their roads.

More generally, Idaho Code section 40-1310(1) provides the exclusive jurisdiction of highway districts over their roads. Likewise section 40-1406 provides the same exclusive jurisdiction to single county-wide highway districts.

While acknowledging local authority, ITD desires to explore options for a statewide, multi-jurisdictional permitting system. Benefits of statewide permitting would include increased uniformity, industry compliance, enforcement, customer service and safety. In order to continue the dialogue with local jurisdictions, ITD staff has drafted three options for statewide permitting.