

## **39.03.11 - RULES GOVERNING OVERLEGAL PERMITTEE RESPONSIBILITY AND TRAVEL RESTRICTIONS ON US-12**

### **FREQUENTLY ASKED QUESTIONS**

#### **1) Why is ITD proposing this administrative rules change?**

US-12 is effectively closed to certain “oversize” loads as a result of a ruling by the federal district court. In 2013, a federal district court ruled that the U.S. Forest Service (USFS) had jurisdiction of vehicles and loads traveling through the Clearwater National Forest. Although the USFS filed an appeal asserting it did not have jurisdiction to close a state highway, the matter has stalled for more than two years in mediation. In an attempt to assert its court ordered jurisdiction, the USFS issued the following criteria to determine which loads would be subject to its review:

- Exceeds 16 feet wide or 150 feet long; or
- Requires longer than 12 hours to travel through the Wild and Scenic River Corridor and National Forest (US 12, milepost 75.2 to 174.4); or
- Requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance.

Although the Idaho Transportation Department (ITD) currently issues overlegal permits for all loads that meet state law and rule, ITD proposes adopting Forest Service criteria into its administrative rules in an effort to reduce confusion by the public and commercial transporters. The goal is to address the concerns previously expressed by the federal litigants, while allowing oversize, non-reducible loads to once again travel on U.S. Highway 12.

#### **2) What would the proposed rules change specifically do?**

The rules would align with the criteria set forth by the USFS, which would:

- prohibit an oversize load from taking more than 12 hours to travel through the National Forest on U.S. Highway 12;
- prohibit road modifications, unless the USFS is advised in advance and consents;
- require ambulances and possible law enforcement escorts to ensure public safety;
- require that safety lighting of the movements does not create a safety hazard to the traveling public as well as to residents along the corridor;
- prohibit oversize loads from using turnouts which are designated for, and primarily used by, recreational vehicles;
- require travel to occur at night when determined to be in the best interest of the public;
- prohibit travel during holidays when traffic volume is high;
- potentially prohibit travel during weekends if traffic volume is predicted to be high;

- prohibit travel during hazardous weather conditions;
- require vehicle inspection by Idaho State Police or equivalent agency of another jurisdiction prior to issuance of permit;
- require ITD to monitor the vehicles and loads as they travel the highway and ensure that only one load operates on this section of highway at any one time;

### **3) Would this proposed rules change affect current exemptions?**

No, these new requirements will not impact those operating under a width exemption. Oversize implements of husbandry are exempt for width as outlined in Idaho Code § 49-1010.

### **4) What is the background that caused the federal litigation?**

ITD has issued permits for large and/or heavy loads on US-12 for decades. Concerns surfaced in 2008 after Exxon Mobil requested to use US-12 in Idaho and Montana to transport up to 200 shipments of equipment from barges in the Columbia and Snake rivers, across Idaho and parts of Montana to an oil project in Canada. In this same general timeframe, Conoco Phillips also requested a permit to haul equipment on this route for an oil project in Montana. ITD evaluated the requests and determined the haulers met all current statutory and administrative rule requirements necessary to obtain permits for the shipments. Several groups and residents protested ITD's issuance of the permits and legal action followed.

### **5) Why is this rule not being negotiated?**

Idaho Rivers United (IRU) and the Nez Perce Tribe brought an action to prohibit oversize loads on U.S. Highway 12.

The Nez Perce Tribe and IRU have no apparent motivation to pursue a resolution in the mediation mentioned above. Thus, a compromise or consensus cannot be reached through negotiation.

### **6) Who would be affected or interested in this proposed rule change?**

- Commerce industry
- Environmental/conservation organizations
- General public
- Transporters
- Trucking industry
- U.S. Forest Service

**7) If this rule were to pass, what is the fiscal impact to the state?**

There is no fiscal impact to the Department. There is a potential fiscal impact to industry for the costs of obtaining ambulance services and possible police escorts when needed. There may be additional costs for industry in regard to efficient lighting that meets current standards, but does not create a safety hazard to the traveling public.

**8) How does this proposed rule change relate to other rule changes currently being proposed by ITD?**

This rule change deals only with the permitting requirements of nonreducible loads on US-12, and does not affect or relate to other rules currently being proposed by ITD.