

Idaho Transportation Board – Special Meeting
Wednesday, June 8, 2016
10:30 a.m.
3311 W. State St. Boise, ID 83707

PERMITTED TRUCKS – NEGOTIATED RULEMAKING

In April 2016, the Idaho Transportation Department began negotiated rulemaking related to permitted trucks. The department received comments and/or verbal testimony from approximately 40 citizens or organizations between May 6 - May 31. The public comment period included a public hearing on May 25. The hearing allowed for video conferencing at five of the department's districts throughout the state, along with the option to testify by Webinar or telephone.

Department staff reviewed the comments and testimony, and 17 general comment categories were identified:

- 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
- 17) Allowable vehicle size

For each of these 17 categories, a concept sheet is provided with corresponding titles.

The concept sheets give a basic overview of the comments received which align with a general topic, and where feasible, includes a potential modification to be considered. The concept sheets also include analysis or relevant background information related to the topic.

In addition to comments and suggestions received, in some cases questions relating to meaning or application of existing rules were submitted from the stakeholders. ITD will be responding to these questions later in the process, and have not made any attempt to present answers to these questions in this analysis.

Also attached is copy of all written comments received.

The limited verbal comments that were received at the May 25th hearing are being evaluated for inclusion in the topics identified herein above.

ADMINISTRATIVE RULE CONCEPT

SAFETY INSPECTIONS AND ENFORCEMENT (OWNER INSPECTIONS)

Intent – As per directions by the Governor’s letter, the Department has initiated Negotiated Rule Making. As part of the process of negotiated rulemaking, the Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comments - Comments were received from ISP 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.

Proposed Modification by Commenter – ITD should adopt a requirement that all overlegal permit applicants are required to self-certify that they have performed inspections in accordance with 49 CFR Part 396.17 and 396.19, prior to obtaining an overlegal permit.

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

Analysis - Every vehicle operating under the authority of an overlegal permit issued by the Department would self-certify that they meet the requirements as set forth in Federal Motor Carrier Administration (FMCSA) 49 Code of Federal Regulations (CFR) Part 396.17 and 396.19. The term “commercial motor vehicle” includes each vehicle in a combination of a commercial motor vehicle. For example, a tractor semitrailer would consist of the tractor, the semitrailer, and/or the full trailer (including the converter dolly, if so equipped).

Under this rule, Motor carriers must ensure that individuals performing annual inspections are qualified as follows:

- (1) Understand the inspection criteria set forth in FMCSA 49 CFR Part 393 and Appendix G and can identify defective components;
- (2) Are knowledgeable of and have mastered the methods, procedures, tools and equipment used when performing an inspection; and
- (3) Are capable of performing an inspection by reason of experience, training, or both as follows:
 - (i) Successfully completed a Federal-or State-sponsored training program or have a certificate from a State or Canadian Province that qualifies the individuals to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training or experience totaling at least one (1) year.

Such training or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial motor vehicle inspector for a State, Provincial or Federal government.

(E) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section.

Proposed Modification – Language would be 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.

ADMINISTRATIVE RULE CONCEPT

SAFETY INSPECTIONS AND ENFORCEMENT (LAW ENFORCEMENT INSPECTION)

Intent – As per directions by the Governor’s letter, the Department has initiated Negotiated Rule Making to request and receive information pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Several comments were received stating that the current number of inspections conducted on commercial motor vehicles (CMV) is sufficient. Other comments focused on enhancing inspection/enforcement program.

Analysis – The Idaho State Police (ISP) has oversight of the safety inspection program and is currently funded to perform truck inspections and authorizes ITD to perform cursory inspections. Idaho Code § 67-2901 and IDAPA 11.13.01, which adopts parts of FMCSA’s 49 CFR, currently give the Idaho State Police (ISP) Commercial Vehicle Safety (CVS) Troopers the authority to conduct driver and vehicle safety inspections of commercial motor vehicles (CMV). IC § 40-510 and § 40-511 gives ITD Ports of Entry (POE) the authority to conduct safety inspections in relation to Idaho driver and vehicle equipment laws. Through an MOU with ISP, ITD is enabled to enforce a limited number of the federal regulations.

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. CVS troopers receive certification from the Commercial Vehicle Safety Alliance (CVSA) and are certified to conduct full inspections, including roadside inspections. 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.

In calendar year 2015:

ISP CVS completed the following:

- 9467 Commercial Vehicle Inspections and 2578 vehicle/equipment out of service violations
- ITD completed 4,616 inspections and 744 agriculture inspections

As the lead agency, ISP presented information stating that on a national level, "Equipment violations account for ~8% of the commercial vehicles (sic) crashes with brakes/brake system failures having potential for the biggest impact." As a result, ITD conducted an in depth historical safety evaluation of Idaho commercial vehicle accident rates associated with equipment failure or defect. During the 2010-2014 timeframe there were a total of 110,480 crashes statewide, and of those 3,912 involved tractor-trailer combinations. Over the five (5) year period, crashes involving tractor-trailer combination vehicles where a vehicle defect was a contributing circumstance comprised just 3.4% of crashes, and just 0.1% of all crashes in the state. Further, during this period only 0.79% of tractor-trailer crashes involved brake malfunction or defect which comprises only 0.028% of all accidents statewide.

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.

ADMINISTRATIVE RULE CONCEPT

EQUIPMENT/OVERLEGAL LOADS

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

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 technologies include such things as ABS braking systems, whereas emerging technologies include: lane departure, stability control, rear cameras, and crash avoidance systems.

Analysis – 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's phased in additional brake requirements for commercial motor vehicles, including automatic slack adjusters to automatically adjust 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.

The staff opines the current FMVSS regulations for air brake systems are sufficient. 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. Staff recommends adding language to the ITD IDAPA rules that requires brakes be maintained to the FMVSS standard in effect at the time the commercial motor vehicle was manufactured.

ADMINISTRATIVE RULE CONCEPT

DRIVER QUALIFICATIONS

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Comments were received from ISP and others regarding driver training, age requirements, and enhanced driver qualifications for drivers of Long Combination Vehicles (LCV): suggestions included rulemaking 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.

Proposed Modification:

Specifically, ISP proposed adopting the FMCSA rules that govern the training requirements for LCV's as contained in 49 CFR Part 380. These requirements 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; 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. 3) Increasing the age limit for all LCV drivers to 21 years of age or older.

Analysis – 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.

Staff recommendation: Implementation of a training program as listed in 49 CFR 380 through the Idaho Legislature would better train and qualify drivers to operate over-legal LCV’s. It would also help insure compliance with FMCSA rulemaking.

ADMINISTRATIVE RULE CONCEPT

TRUCK PERMITTING

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

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.
- 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’ in high. Industry proposes that this modification to rule would increase efficiency of movement, eliminating the sometimes cumbersome requirements of single trip permits.
- 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.
- 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.
- 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.
- 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.

- 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 be an efficiency and cost savings.
- H. **Minimum Power Axles** - Requests that a section be added in 39.03.22 that requires all power units 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.
- 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 axels on 129K vehicles is consistent with previous truck schematics/ information presented by industry.

Analysis –

- A. **Automated Permitting System** - Currently ITD utilizes a mainframe system that makes it impossible for 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.
Staff recommends: This is a modernization of systems issue and DMV has declared that an alternate solution will be forthcoming within 2-3 years.
- B. **Increase maximum Dimensions for Ag Permits** - ITD modified Administrative Rule 39.03.19, Rules Governing Annual Overlegal Permits, in 2016 to increase annual overlegal permits to a new maximum width of 16' from 14'6" due to a similar request by the agricultural industry.
Staff recommends: Maintaining current width and height requirements so that staff are involved in order to provide for the safety and oversight of these overlegal movements.
- C. **Update ITD Permit Manual** – Most recent Permit Manual update was performed in 2013.
Staff recommends: ITD concurs with comment and Permit Manual is scheduled to be updated this year.
- D. **Discourage Long-Term use of Overlegal Permits** - 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.
Staff recommends: No change to current rule.

- E. **Improve Color coded Route Map** - 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.
Staff recommends: Web links can be placed in the ITD Permit manual, however, since web link addresses change staff opines it would not be beneficial to be in the Permit Manual.
- F. **Better Enforcement of Overlegal Permits** - Performance metrics detailing verification and enforcement of permits can be obtained based on the enforcement actions by ITD Port of Entry roadside inspectors and authorized law enforcement personnel as verified by FHWA annual reviews/audits. Current Idaho code and IDAPA rules adequately provide enforcement tools.
Staff recommends: No change to current rule.
- G. **Single State-Wide 129K Permit** - The Legislature has provided authority to the local jurisdiction through Idaho Code 49-1004A(1) which provides that local jurisdictions shall issue special permits for 129K routes within their local jurisdictions. In order to provide for a single statewide 129K permit, either 1) this section will need to be modified to give ITD jurisdiction over all 129K routes within the state, or 2) the local jurisdictions would need to grant ITD authority to issue 129K permits on local routes as an agent of the local highway jurisdiction.
Staff recommends: These concepts can be explored with local jurisdictions.
- H. **Minimum Power Axles** – To mandate this requirement could hinder commerce, impede economic opportunity, and cause Idaho to be in disharmony with surrounding states.
Staff recommends: No change to current rule.
- I. **Minimum Axles Required** - 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 could hinder commerce, impede economic opportunity, and cause Idaho to be in disharmony with surrounding states.
Staff recommends: No change to current rule.

ADMINISTRATIVE RULE CONCEPT

ROADWAY CHARACTERISTICS FOR 129K ROUTES

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Numerous comments were received regarding characteristics which should be used in the designation of state 129K routes. Below are the characteristics proposed:

- A. Sight distance of 400ft for vehicles traveling at 60 mph and 200 feet for vehicles traveling at 30 mph
- B. Minimum 2ft shoulder width
- C. Passing lanes required where grades are 5% or greater and longer than 2 miles
- D. Runaway truck ramps required where grades are 5% or greater and longer than 2 miles
- E. Provide adequate Chain-up and Chain-down areas
- F. Provide reader boards during adverse weather conditions
- G. Set maximum speed limits of 65MPH on 129k routes
- H. Seasonal reduction in load limits (spring break-up)
- I. Northern Idaho roads are not suitable for 129K designation

Staff recommends: No change to rule based upon the information below.

Analysis

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

The AASHTO Green Book sets engineering and design standards for the construction of new roadways. It is not intended to be used as the basis of establishing 129K route designations. The AASHTO Green Book does not attempt to provide sight distance standards for 129K routes. The Green Book provides: “the recommended stopping sight distances [contained herein] are based on passenger car operation and do not explicitly consider design for truck operation.”

B. Minimum 2ft shoulder on 129k routes.

Roadway shoulder width is a factor that affects safety for all travelers on 129K designated highways. Shoulder improvements are considered during highway reconstruction projects. 129K vehicles have the same length and width requirements as 105.5K vehicles. When designing new routes or reconstructing existing routes, the ITD Roadway Design Manual provides standards on shoulder widths based on route type, level of construction, traffic volumes, speeds, and percentage of commercial vehicles.

Roadway shoulder width is incorporated into ITD's allowable off-tracking routes map that is used to regulate extra-length vehicle combinations.

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

The need for additional passing lanes is not associated with the gross weight of the 129K vehicles using the designated routes. Typically 129K vehicles do not require additional passing lanes beyond those utilized by 105.5K vehicles.

Passing lanes on two-lane highways are designed per ITD's Roadway Design Manual. Highway design speeds and sight distances are among the factors considered when evaluating locations for passing lanes. Volumes of commercial vehicles are addressed through the use of the Highway Capacity Manual for determining the level of service calculations.

Idaho Administrative Rules already address the power to weight ratio of all trucks (regardless of weight) by requiring all trucks (including ones that weigh up to 129,000 lbs.) 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. ITD follows the guidance given in the AASHTO Green Book in the design of truck emergency escape ramps on new highways.

Runaway truck ramps are already constructed at all known locations on the state highway system where warranted. While the gross weight of the truck is a factor in designing the length and depth of the ramp, it is not a factor used in determining the need for one. The location of runaway truck ramps is based upon an engineering analysis of locations where high truck speeds would result in the truck leaving the roadway.

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

It is important to note that on all approved routes, a permit is required for 129K loads. 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. This would be applicable for all vehicles, not just 129K vehicles.

F. Provide reader boards during adverse weather conditions.

It is important to note that on all approved 129K designated routes, a permit is required for 129K loads. These permits do not allow loads to operate in adverse weather 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 (PCMS) 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 that system as well.

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

Per recent Idaho Code modifications, 129K vehicles are soon to be 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 Idaho Code section 49-201, speed limits are set in accordance with speed studies and engineering analysis.

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.

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.

Engineering analysis is applied in the selection of appropriate routes for 129K configurations based on State and Federal Highway Standards. Each 129K route designation application on the state highway system will be reviewed to determine the suitability for 129K vehicles. The analysis of the route designation addresses the interaction of 129K vehicle combinations with roadway geometry.

ADMINISTRATIVE RULE CONCEPT

129K REGIONAL HARMONIZATION

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Comments were received expressing that regulatory requirements among the states regarding issuance of 129K permits should be harmonious whenever possible.

Proposed Modification by Commenter – Commenters expressed an interest in modifying existing overlegal rules to bring Idaho into closer harmony with surrounding states relating to 129K vehicles.

Analysis – In order to allow 129K vehicles on the interstate changes to Administrative Rule 39.03.15, Rules Governing Excess Weight Permits for Reducible Loads, will be necessary to bring the rule into compliance with Idaho Code § 49-1004B. Section 49-1004B details that Idaho Interstate Highways (I15, I84, I86, I90 and I184) are identified as a “designated routes” allowing movements up to 129K.

Staff recommends: Staff concludes Administrative Rule changes would be required to increase regional harmonization of 129K permitting.

ADMINISTRATIVE RULE CONCEPT

SUPPORT FOR EXISTING REGULATIONS/RULES

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Comments were received expressing support for existing rules and regulations. Several respondents commented that the current rules should not be altered and are sufficient for 129K permits. Many comments also relayed that the current exemptions in federal and state statutes should remain as is.

Proposed Modification – No specific administrative rule (or modification) was proposed. The comments suggested no change to either existing federal and state regulations or rules was necessary for the movement of up to 129K vehicles on Idaho’s highway system.

Analysis – Some specific rule improvements have also been proposed that are being analyzed and considered on their own merits.

Staff recommends: No change needed.

ADMINISTRATIVE RULE CONCEPT

“Over-Legal”

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Several commenters said designating vehicles more than 80K as “over-legal” insinuates they are not legal. They opined “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.

Proposed Modification – Commenters would like the term “over-legal” removed. No specific suggestions were given as to a suitable replacement term.

Analysis – 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. A vehicle also requires an over-legal permit, if it exceeds statutory length limits.

Staff recommendation: While staff agrees that the term “over-legal” may not be the most accurate nomenclature, it will expend necessary time and resources researching alternative designations.

ADMINISTRATIVE RULE CONCEPT

Rulemaking Process

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – The Idaho Farm Bureau Federation and the Idaho Sugarbeet Growers Association submitted comments regarding the rulemaking process. These stakeholders were confused as to why there was no draft rule presented at the May 25th public hearing. Additionally they have requested ITD to 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 that the Department should incorporate safety concerns and information from past legislative hearings into its rulemaking process.

Proposed Modification – No administrative rule modification was offered by the commenters to address this concern.

Analysis – The negotiated rulemaking process is flexible and fluid by design. It is an informal process that is conducted in advance of the formal proposed rulemaking process. Negotiated rulemaking is conducted with interested parties, in order to improve the final rule and expedite the rulemaking process. This process allows the agency to leverage shared information, knowledge, expertise and technical abilities from outside stakeholders.

This particular rulemaking was prompted by a letter from Governor Otter relating to SB1229 and 129K interstate route designations. Commensurate with suggestions from the Governor and interested legislators ITD began the negotiated rulemaking process.

Any proposed administrative rule promulgated by the Department following the negotiated rulemaking process will be commensurate with the statutory requirements for administrative rulemaking.

Staff recommends: In an effort to use the most timely information available researching past legislative testimony may not be the best source of relevant information.

ADMINISTRATIVE RULE CONCEPT

RULEMAKING SCOPE

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comments – Several comments were received regarding the scope of this negotiated rulemaking process. The most common comment received was draft rules stemming from this negotiated rulemaking should not be any more stringent than current federal regulations. Commenters also regularly referenced that when it comes to driver qualifications, vehicle/equipment and safety issues the Federal Motor Carrier Safety Administration (FMCSA) should be the controlling authority. Current FMCSA regulations relating to drivers, vehicles, and safety are sufficient. Additionally some commented that issues associated with current engineering highway standards are well beyond the scope of this rulemaking process. They further stated their concern that broad changes to the current system could be harmful to Idaho businesses. Furthermore, some commenters suggested that 129k rules for implementing SB1229-2016 should be done separately from this rulemaking.

Proposed Modification by Commenter – No administrative rule modification was offered by the commenters to address this concern.

Analysis – Administrative Rules cannot preempt federal or state statutes. However, states may provide greater protections resulting in more stringent regulations in certain circumstances. Based upon the suggestions received during this negotiated rulemaking process it does not appear that the department would be entertaining administrative rules more restrictive than those in current federal and state laws relating to 129K permitting.

Staff Recommendation: Some specific rule improvements have also been proposed that are being analyzed and considered on their own merits.

ADMINISTRATIVE RULE CONCEPT

ENFORCEMENT AND PENALTIES

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Numerous comments were received expressing the need for enhanced enforcement and penalties for vehicles violating overlegal permit requirements or conditions. These comments are summarized as follows:

- a) Set stiff fines and penalties for those responsible for loading, as well as those operating commercial permitted vehicles illegally.
- b) Out-of-Service designations should be strictly enforced due to “imminent safety hazard.”
- c) Regular evaluations of speed limits and strict enforcement of violations involving passenger vehicles and trucks.
- d) Increase inspections on routes that trucks use to bypass or avoid POEs.
- e) Incentivize legal operation through possible tax breaks for legally operated permitted vehicles.

Proposed Modification – While no specific administrative rule (or modification) was suggested, the comments proposed increasing compliance through raising fines and penalties. They also proposed denying overlegal permits for Out-of-Service orders by FMCSA. Commenters further proposed support for POE personnel having additional inspection sites on routes which suspected violators may utilize to avoid POE sites.

Commenters suggested required evaluations of speed limits and strict enforcement of violations involving passenger vehicles and trucks.

Analysis – Collaboration with the Idaho Supreme Court is needed to increase the fines for overlegal violations. Increasing penalties for the vehicle operators violating overlegal will require legislation. It is not yet known if legislation is appropriate/possible to punish those responsible for the loading of goods on permitted vehicles. Currently, enforcement personnel are able to cite the drivers of illegally operated permitted vehicles. It is the driver’s responsibility to abide by the proper size, weight, and safety requirements for the operation of a permitted vehicle.

Additional technologies could assist POE in staff utilization 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.

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.

Staff recommendation:

Staff recommends collaboration with the Supreme Court of Idaho in order to increase fines for overlegal violations. Additionally, safety may be enhanced through a change to Administrative Rule 39.03.23, Rules Governing Revocation of Overlegal Permits, to insert language that will provide revocation due to an Out-of-Service order by FMCSA.

ADMINISTRATIVE RULE CONCEPT

REASONABLE ACCESS

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

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.

Proposed Modification – No specific rule modification was proposed by the commenters.

Analysis – With regard to reasonable access, 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. In addition, no State may enact or enforce any law denying reasonable access between the NN and points of loading and unloading to household goods carriers, motor carriers of passengers, and any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 feet (28.5 feet where allowed pursuant to § 658.13(b)(5) of this part) and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a) of this part.

(b) All States shall make available to commercial motor vehicle operators information regarding their reasonable access provisions to and from the National Network.

(c) Nothing in this section shall be construed as preventing any State or local government from imposing any reasonable restriction, based on safety considerations, on access to points of loading and unloading by any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 281/2 feet

and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a).

(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.

(e) Approval of access for specific vehicles on any individual route applies to all vehicles of the same type regardless of ownership. Distinctions between vehicle types shall be based only on significant, substantial differences in their operating characteristics.

(f) Blanket restrictions on 102-inch wide vehicles may not be imposed.

(g) Vehicle dimension limits shall not be more restrictive than Federal requirements.

(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 (Emphasis added)(*State Transportation Assistance Act).

The Idaho Legislature has recognized this exemption in Idaho Code section 49-1010(3):

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.

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

ADMINISTRATIVE RULE CONCEPT

DATA COLLECTION

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

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.

Proposed Modification – No specific rule modification was provided by the commenters.

Analysis - Vehicles are currently screened at Ports of Entry 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 results.

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 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.

Staff recommends: Currently, POE staff submits an annual review analysis to the Federal Highway Administration (FHWA) to be evaluated for the effectiveness of Idaho's size and weight program.

PERMITTED TRUCKS - ADMINISTRATIVE RULE CONCEPT

FUNDING

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Concerns were raised by the Ada County Highway District, the Idaho Association of Highway Districts, the Idaho Association of Counties and the Local Highway Technical Assistance Council, regarding the impact heavier loads have on road and bridge infrastructure and the resulting costs for maintenance and repair.

The Ada County Highway District pointed to the 129,000 Pound Pilot Project Report of 2013, where private industries reported significant savings from using these vehicles. Specifically, Ada County Highway District wants these savings to result in increased permit fees in order to offset increased costs for damage to public infrastructure. The Idaho Association of Counties noted counties will require additional revenue from heavier vehicles in order to ensure proper maintenance of roads.

Proposed modification – Commenters recommended increasing permit fees for 129K permitted vehicles.

Analysis – Currently registration fees for commercial vehicles are set on a sliding scale for weight taking into account any increased road use caused by heavier loads. Commercial vehicle operators who travel in Idaho currently pay a combination of registration fees, fuel tax, and in some cases, permit fees. Registration and fuel tax fees are set in statute by the legislature. Registration fees are based on vehicle weight and miles traveled.

For example, if the vehicle types shown below traveled between 20,001 – 35,000 miles in the state, the registration fee would be as listed:

| | |
|-----------------------|---------|
| 80,000 pound vehicle | \$1,700 |
| 105,500 pound vehicle | \$2,358 |
| 129,000 pound vehicle | \$2,965 |

By statute registration fees and fuel taxes are proportioned to the Highway Distribution Account which divides the fees among the Idaho Transportation Department (57%), Local Jurisdictions (38%) and Idaho State Police (5%). Increased fuel tax and registration fees approved by the 2015 Idaho Legislature were apportioned 60% to the Idaho Transportation Department and 40% to local highway jurisdictions.

Idaho's statutorily directed fee structure for road usage does assess higher fees for vehicles that are larger or heavier.

Staff recommends: Any change to registration fees for heavy vehicles is a policy decision and a legislative prerogative. Overlegal permit fees are set by administrative rule. The administrative costs incurred in the processing, issuance and enforcement of overlegal permits. IDAPA 39.03.21.100.

ADMINISTRATIVE RULE CONCEPT

LOCAL AUTHORITY

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – Comments were received expressing concern that nothing in the negotiated rulemaking process be used to usurp the authority of local jurisdictions over the roads and highways within their localities. 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.

Proposed Modification – No administrative rule modification was offered by the commenters to address this concern.

Analysis – The Idaho Code is clear that authority over the roads and highways within local jurisdictions is held exclusively with the local jurisdiction.

Specific to 129K routes and permits, Idaho Code section 49-1004A(3) clearly provides for the exclusive jurisdiction of local counties and highway districts over their roads.

Nothing in this section shall limit the exclusive jurisdiction of a local authority in its discretion to decline to designate, to revoke or modify an existing designation, or to place limits upon the designation of, highways within its jurisdiction that it determines hereunder to have public safety concerns or limited structural capacity of pavement, bridges or other appurtenances.

I.C. § 49-1004A(3)(emphasis added).

More generally, Idaho Code section 40-1310(1) provides the exclusive jurisdiction of highway districts over their roads.

The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways

within their highway system, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized.

I.C. § 40-1310(1)(emphasis added).

Likewise section 40-1406 provides the same exclusive jurisdiction to single county-wide highway districts as those provided to highway district commissions set forth above. “The highway commissioners of a county-wide highway district shall exercise all of the powers and duties provided in chapter 13 of this title” I.C. § 40-1406.

A significant statutory change would be required in order for ITD to usurp the exclusive authority of a county or highway district’s authority over the roads and highways within the county or highway district’s jurisdiction.

Staff recommends: Not modifying existing Idaho code, thereby retaining county or highway district’s exclusive authority to issue permits or designate 129K routes within their jurisdictions.

ADMINISTRATIVE RULE CONCEPT

ALLOWABLE VEHICLE SIZE

Intent – This negotiated rulemaking was prompted by a March 21, 2016, letter from Governor Otter regarding S1229 relating to 129K vehicle interstate route designations. Commensurate with suggestions from the Governor and interested legislators, the Idaho Transportation Department began the negotiated rulemaking process.

The Department has sought public comments and input pertaining to the following:

- Safety, such as driver qualifications and equipment needs
- Regional harmonization
- Improved permitting process
- Improved customer service

Comment – In order to bring Idaho into compliance with the recently passed Fixing America's Surface Transportation Act (FAST) which allows stinger steered auto transporters an overall legal length of 80 feet and increases their legal overhang. Idaho Code section 49-1010 was modified to increase legal overhang for an automobile transporter from 7 feet to 10 feet (4 feet front and 6 feet rear overhang).

Proposed Modification – Modify Administrative Rule 39.03.06 to bring it into compliance with recent amendments to Idaho Code.

Analysis – A concept was brought forward to amend IDAPA 39.03.06 to comply with modifications brought about by the passage of Senate Bill 1261-2016. This amendment modified Idaho Code section 49-1010 to provide uniformity with the FAST Act. The modification of Idaho code requires an administrative rule amendment to remove reference to stinger-steered automobile transporters.

Staff recommends: As the legal length limits for overhang are defined in Idaho Code section 49-1010, there is no need for this section in the Administrative Rule.