

ITD's U.S. 12 Comment Responses

ITD's intent of this proposed rule is to address concerns raised by the federal litigants regarding certain oversized loads operating on U.S. 12 from milepost 74 – milepost 174. This rule does not address all commercial traffic on U.S. 12. Rather, this rule addresses only those loads which trigger the US Forest Service's interim criteria for oversized loads traveling on this portion of U.S. 12. These criteria include loads which: exceed 16' wide or 150' in length or take more than 12 hours to travel between milepost 74 – milepost 174 or require physical modifications to the highway.

Highway User Impacts

- 1) Will these oversized loads use recreational turnouts?

Turnouts will only be used by these loads in case of an emergency or for other reasons. Loads are required to move through the corridor within a single 12-hour span and thus will not be parking overnight within the corridor. Additionally, turnouts may be used for temporary traffic control. Those turnouts would be designated in advance.

- 2) Is there a fiscal impact to the public?

The purpose of the fiscal impact noted within the *Proposed Rulemaking Notice* is indicative of administrative costs associated with implementation of the rule; not potential fiscal impacts to the public for allowing large loads on Highway 12.

- 3) Should these types of loads be limited to only one at a time; for this segment of highway?

The proposed rule change already mandates that only one of these types of loads may pass through milepost 74 – milepost 174 at a time.

- 4) Are wide loads unsafe on narrow highways?

ITD analyzes the road characteristics and will not permit a load to operate on any highway which it determines to be unsafe. Routes 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 evaluation of routes for these types of loads based on State and Federal Highway Standards. The analysis effectively applies to all routes regardless of location within the state.

- 5) Do these types of heavy loads cause damage to highways, roads, bridges, etc.?

Prior to issuing a permit for an oversized load, ITD performs an engineering analysis to ensure that the integrity of the roadways and bridges are not compromised. Each bridge has a maximum load capacity it can handle without experiencing a high risk of damage or

failure. Roads have been determined to perform well under a threshold of 18,000 lbs/axle. Whenever an overlegal load is considered, the load's route will not be allowed or permitted until each bridge is checked for capacity and the transporter demonstrates there will be a sufficient number of axles to adequately distribute the weight of the load. By following these steps, an overlegal load will not cause any more damage to roads and bridges than legal weight vehicles.

6) Is there too much commercial traffic on Highway 12?

Highway 12 has been and is currently used by commercial motor vehicles to transport passengers, goods and products.

7) Are there alternative routes available?

There are few routes similar to Highway 12 in Northern Idaho which can accommodate the weight and length of *non-reducible* overlegal loads. While there is almost always more than one route a shipper can use to transport *reducible* overlegal loads in Idaho. ITD does not require shippers to use any specific route. Rather, the Department evaluates the shipper's request to determine whether the route can adequately and safely handle the desired load.

The role of the USFS regarding these types of loads

8) Does the USFS still have review authority for these types of loads?

Yes, pursuant to the federal court ruling, both ITD and USFS have their respective jurisdictions over these loads. ITD retains jurisdiction to issue permits and currently issues them along this section of highway. This administrative rule is intended to clarify these roles and reduce confusion among commercial shippers; while at the same time increasing safety by addressing specific concerns raised by the federal litigants.

9) Is the USFS criteria interim and subject to change?

Yes, the USFS's interim criteria are not final and may be changed by the USFS at any time. When and if the USFS interim criteria do become final, ITD will re-evaluate this proposed administrative rule.

10) Did the USFS adopt weight limits within their interim criteria?

No, the USFS did not reference weight limits. Weight limits on the state highways are currently addressed by Idaho statute and administrative rule. ITD carefully monitors and

analyzes each permit application for the effect of weights on highways and bridges. The load must satisfy the conditions of the issued permit; each issued permit is unique to that load.

11) Does this rulemaking interfere with the federal lawsuit?

No. ITD recognizes the status of the federal litigation regarding both Judge Winmill's injunction and the 9th Circuit Appeal. The court ordered the USFS to enjoin one transporter from carrying one specific load on Highway 12. Highway 12 has not been closed by the court or by the USFS to all oversized loads. So, ITD still retains jurisdiction for permitting these types of loads under current statutes and administrative rules.

12) Do these types of loads damage or negatively impact tribal lands or interests?

ITD recognizes there is a balancing of interests in operating any highway. In this case, Highway 12 has been used for many decades for the movement of oversized loads. These types of loads comprise only a small portion of the traffic on Highway 12. The movement of commerce and persons benefits the entire community within this corridor.

ITD Responsibilities

13) Who monitors the loads from ITD? Who will enforce these rules?

ITD's Motor Carrier Services Unit, Port of Entry and the Division of Highways will be responsible for compliance with the applicable administrative rules. Additionally, administrative rules carry the force and effect of law and therefore, any law enforcement officer has the ability to enforce the rules and their requirements.

14) Will there be additional limits or restrictions for winter travel?

Winter travel restrictions are already addressed in ITD's administrative rules and in each individual permit.

15) Will ITD restrict the transport of toxic materials on Highway 12?

These types of loads typically do not carry toxic materials. For those smaller loads that do transport toxic materials, they are strictly regulated by federal and state law.

16) Why permit these types of loads on Highway 12?

Highway 12 is a designated U.S. Highway constructed and maintained for the purpose of moving the public and commerce from one location to another. Highway 12 is also part of the national highway system.

17) Should monitoring be discretionary or mandatory?

As currently drafted, the rule provides that monitoring is mandatory.

In regards to the suggestion that Section 39.03.11 .200.09 change to a mandatory delay of movements; ITD will propose the following changes:

089. Delaying Movement. Enforcement personnel responsible for any section of highway ~~may delay movements and shall~~ carry out enforcement action for violations involving overlegal permit operations and may delay movements. ~~(4-5-00)~~ ()

18) Does ITD recognize the safety concerns with these types of loads?

ITD can never completely eliminate all risks for motorists or vehicles on a highway, but ITD does its best to minimize the risk potential. One of the ways ITD minimizes the risk potential is through the modification of administrative rules.

19) Should ITD believe the statements of corporate permit applicants?

ITD operates and functions independently of private corporations. ITD evaluates applications for these types of loads the same way for ALL applicants.

Rulemaking Process

20) Has ITD been transparent during this rulemaking?

ITD held a statewide public hearing, issued two press releases, held a 38-day comment period and has followed the statutory requirements for proposed rulemaking.

Additionally, all information and documents related to this rulemaking can be viewed here: <http://itd.idaho.gov/rulemaking/>.

21) Why did ITD not conduct negotiated rulemaking?

The federal litigants have been in mediation for 2-3 years with no resolution. Idaho Rivers United (IRU) and the Nez Perce Tribe brought an action to prohibit specific oversized loads on Highway 12. A compromise or consensus cannot be reached through negotiation.

22) Does the proposed rule change the status quo?

This administrative rule adopts the USFS's interim criteria for oversized loads on Highway 12 and purports to address the federal litigants' safety concerns. This rule sets forth more specific requirements for the issuance of permits for these types of loads.

Policy and Political Concerns

Does the public support these types of loads on Highway 12?

Does the issuance of a permit support the tar sands project?

Are these types of loads bad for the tourist economy?

Wouldn't allowing commercial use of the highway create more jobs in Idaho?

Is there a fiscal impact to the public or community?

The five (5) questions above are political/policy questions in nature and are not considered in the issuance of a permit. Permits are issued based on federal and state transportation laws. The Department applies these laws and examines whether or not a load can safely travel on a state highway.