



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720-1000

LARRY ECHOHAWK
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

TELECOPIER
(208) 334-2530

NATURAL RESOURCES
TELECOPIER
(208) 334-2690

March 5, 1991

Kermit V. Kiebert
Director
Idaho Department of Transportation
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Idaho's Grandfather Rights for Vehicle Weight Limitations

Dear Mr. Kiebert:

You have requested a legal guideline from this office concerning Idaho's grandfather rights under 23 U.S.C. 127. This section of federal law establishes vehicle weight limitations for interstate highways. These weight limitations must be observed by a state in order for it to qualify for its annual apportionment of federal highway funds.

As background, it should be noted that both the federal vehicle weight limitations and the state vehicle weight laws regulate a vehicle's weight by the load in pounds carried on any group of two or more consecutive axles. There are also restrictions on the weight for a single axle and a single wheel gross weight. With regard to the restriction on weights for a group of two or more consecutive axles, a five-axle vehicle could have up to ten different axle combinations which would be subject to the weight limitations. The further apart the first and last axle, the greater the weight that can be carried.

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23 U.S.C. 127 provides for vehicle weight limitations on the interstate system. This statute provides that one axle can carry a maximum of 20,000 pounds or the axle weight limitation in effect in a state on July 1, 1956. A tandem axle may carry a maximum of 34,000 pounds or the weight limitation for tandem axle in effect in a state on January 4, 1975. Additionally, the gross weight of the vehicle combination cannot exceed 80,000 pounds or the maximum gross weight which could have been allowed by the state on July 1, 1956.

Idaho law provides for two sets of weight limitations for vehicle combinations. First, Idaho Code § 49-1001(1) codifies the federal weight limitations up to 80,000 pounds. Vehicle combinations can operate on the interstate system at weights in excess of 80,000 pounds with an overweight permit issued pursuant to Idaho Code § 49-1004. With an overweight permit, a vehicle combination can operate on an interstate highway at 105,500 pounds. This set of weight limitations allows the vehicle combination to carry 34,000 pounds on a set of two consecutive axles eight feet apart or less.

The second set of weight limitations is found at Idaho Code § 42-1001(2). This section allows special commodity haulers to operate vehicle combinations on the interstate system with a tandem axle weight of 37,800 pounds. The maximum gross weight for the vehicle combination under this section is 79,000 pounds.

Your inquiry is whether Idaho law allows a combination of vehicles to operate on an interstate highway with a set of consecutive axles at the 37,800 pound weight limit provided for in Idaho Code § 49-1001(2), and an overall weight of the vehicle combination in excess of 79,000 pounds, but in compliance with the weight limitations of § 49-1001(1). For the reasons stated herein, the answer is that this type of vehicle combination is not authorized by Idaho statute or department rule. Special commodity haulers that operate a vehicle combination with two consecutive axles at 37,800 pounds are limited to an overall gross weight of 79,000 pounds while operating on interstate highways in Idaho.

1. The Federal Requirements:

23 U.S.C. 127 (a) provides in part:

This section shall not be construed to deny apportionment to any State allowing the operation

within such State of any vehicles or combinations thereof which the State determines could be lawfully operated within each State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974 [enacted Jan. 4, 1975].

Thus, in order to qualify for federal highway funds, Idaho must enforce either the federal weight limitations that were in effect January 4, 1975, or July 1, 1956.

23 U.S.C. 141 states in part:

Each State shall certify to the secretary before January 1, of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban systems, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title [23 USCS Sec. 127].

If the secretary determines that a state is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, the Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title [23 USCS Sec. 104].

If the Secretary determines that a state is not enforcing the weight limitations contained in 23 U.S.C. 127, then he is required to reduce that state's allotment of federal highway funds by ten percent. A state then has one year to make the required corrections or permanently lose ten percent of its allotted federal highway funds.

2. The Chronology of Relevant Idaho Statutes:

The Idaho weight limitation statutes were codified in title 49, chapter 9, Idaho Code, until 1988 when the chapter of the code was redesignated as chapter 10 of title 49 of the code.

The weight limitations for vehicle combinations in Idaho on July 1, 1956, were all below the federal limitations. With the exception of the state's ability to issue overweight permits (see Section 3 of this guideline), Idaho has no grandfather rights for single axle weights or the overall gross weight of a vehicle.

The second relevant date for determining Idaho's grandfather rights is January 3, 1975. A state must enforce a 34,000 pound limitation on a set of tandem axles or the weight limit in effect in that state on January 3, 1975. 23 U.S.C. 127.

Chapter 184 of the 1975 Sessions Laws became effective on January 1, 1975. This chapter of the Session Laws amended then Idaho Code § 49-901 and provided for the appropriate weight limitations for vehicles traveling on state highways, including the interstate system. This is the statute that codifies Idaho's grandfather rights for gross weight of two or more consecutive axles (tandem axles).

Idaho Code § 49-901(c), as of January 1, 1975, stated in part:

The weight limitations set forth in subsections (a) and (b) hereof shall not apply to any vehicle, motor vehicle, trailer, and/or semi-trailer, or combination thereof, engaged in the transportation of logs, pulp wood, stull, poles or piling; nor to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel, and aggregates thereof, in bulk; nor to any such vehicle engaged in the transportation of agricultural commodities including livestock, but no such vehicle shall be operated on the highways of this state where the total gross weight imposed on the highway by any one (1) axle exceeds 18,900 pounds, or where the total gross weight imposed on the highway by any one (1) wheel exceeds 9,450 pounds, or where the total gross weight imposed on the highway by any group of consecutive axles exceeds the weight set forth for the respective axle spacing in the following table:

Distance in Feet between First and Last Axles of any Group of Axles	Allowed Load in Pounds	
	Vehicles with Three or Four Axles	Vehicles with Five or More Axles
3.....	37,800	37,800
4.....	37,800	37,800
5.....	37,800	37,800
6.....	37,800	37,800
7.....	37,800	37,800
8.....	37,800	37,800

The maximum gross weight allowed under § 49-901(c) was 79,000 pounds.

In 1986 the Idaho Legislature again amended Idaho Code § 49-901. First, the federal weight limitations were modified to allow 34,000 pounds on a tandem axle. This modification was in accord with federal amendments to 23 U.S.C. 127, P.L. 97424, 96 stat. 2123.

The 1986 grandfather rights statute also provided:

(b) The weight limitations set forth in the table above shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3	37,800	37,800
4	37,800	37,800
5	37,800	37,800
. . .		
47 and over		79,000

Idaho Code, § 49-901(b) (emphasis added).

In 1988 this code section was again amended. It was redesignated as 49-1001(2). The only other modification was the removal of some redundant references in the weight tables.

In summary, the statutory scheme of allowing a vehicle to comply either with the federal vehicle weight limitations or with the state vehicle weight limitations that were in effect on January 1, 1975, has not been modified for vehicles operating on the interstate. With regard to interstate highways, special commodity haulers are limited to the 79,000 pound limitation and 37,800 pounds on two consecutive axles twelve feet or less apart.

3. Overweight Permits

In addition to the vehicle weight laws discussed above, the Idaho Transportation Board was authorized to issue permits for overweight loads.

Idaho Code § 49-905, which was in effect on January 1, 1975, states in pertinent part:

Upon application in writing to the Idaho Transportation Board or other proper authorities in charge of, or having jurisdiction over a public highway, such board or authorities may in their discretion issue a special permit to the owner or operator of any vehicle allowing heavier or wider loads than permitted by law to be moved or carried over and on the public highways and bridges, or allowing more than one (1) trailer to be drawn by a motor vehicle; and may also issue such special permit to increase the permissible weights per inch of width of tire and may also permit the use of corrugations on the periphery of the movable tracts of traction engines or tractors propelled not by wheels resting upon the ground but by flexible bands or chains. Such special permits shall be in writing and may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain such special conditions and require such undertaking or other security as the said Idaho Transportation Board or other proper authority shall deem to be necessary to protect the public highways and bridges from injury, or provide indemnity for any injury to said public highways and bridges or to

persons or property resulting from such operation. All such special permits shall be carried in the vehicles to which they refer and shall upon demand be opened to the inspection of any peace officer, any authorized agent of the Idaho Transportation Board or any officer or employee charged with the care or protection of the public highways. It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of such special permits and any such violation shall be deemed for all purposes to be a violation of the provisions of this chapter. (Emphasis added.)

The only change in Idaho Code § 49-905 between July 1, 1956, and January 4, 1975, was a change in name from the Commissioner of Public Works to the Idaho Transportation Board. In 1988 Idaho Code § 49-905 was redesignated as § 49-1004. Some minor grammatical changes were made to this section of the code. The substance of the overweight permit statute was not modified.

It is the state's ability to issue overweight permits as of July 1, 1956, that allows vehicle combinations to operate on the interstate at a maximum gross weight of 105,500 pounds.

In State ex rel. Dick Irvin, Inc. v. Anderson, 525 P.2d 564 (Mont. 1974), the Montana Supreme Court reviewed the grandfather rights provision of 23 U.S.C. 127 as it relates to Montana's weight laws. After quoting 23 U.S.C. 127 at length, the Montana Supreme Court stated:

The foregoing section prescribes the limitations which must be observed by the states in order for them to qualify for their annual apportionment of federal funds for highway purposes. The section reveals the following criteria for determination of permitted sizes and weights on the interstate system:

a. The state laws in effect on July 1, 1956, must be examined for the purpose of determining whether the maximums prescribed in the federal code or the maximums prescribed by state law apply. If the state law permitted greater maximums as of July 1, 1956, these are controlling, otherwise, the federal maximum prevails.

b. If the state law in effect on July 1, 1956, authorized variations from the maximums, by special

permit or otherwise, such variations are also permitted by the federal statutes to be authorized over the interstate system. Furthermore, a state statute passed after July 1, 1956, setting forth procedures or limitations with respect to such variations may also apply to the interstate system, if the state statutes in effect on July 1, 1956, were broad enough to allow such operations. This is made clear by the following provision of Title 23, Section 127, U.S.C.:

"This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956."

It thus becomes necessary for us to examine the Montana laws in effect on July 1, 1956, to determine, first, the weight limitations having general applicability at that time, and second, the extent to which variations from these weight limitations were authorized by special permit at that time. (Emphasis added.)

525 P.2d at 567-568. The Anderson decision was decided prior to federal-aid highway amendments of 1974.

Applying the rationale of the court in Anderson, the Transportation Board has broad discretion in issuing overweight permits for vehicle combinations operating on interstate highways. Section 49-1004, Idaho Code, places no limitation on the Board's authority to issue overweight permits.

4. Analysis:

Your inquiry is whether Idaho Code § 49-1001(2) allows special commodity haulers the option of complying with Idaho Code § 49-1001(1) or § 49-1001(2). In other words, is it permissible for a combination of vehicles to have one set of two or more consecutive axles comply with the weight table in subsection (1) and another set of two or more consecutive axles comply with subsection (2) of the statute?

The first sentence of Idaho Code § 49-1001(2), which was added in 1986, states in part:

The weight limitations set forth in the table above shall not apply to any . . . combination of vehicles

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when a greater weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state the following table of allowable weights shall apply only to [special commodity haulers].

Under this statute, a combination of vehicles hauling special commodities can comply with either weight table on non-interstate highways. On interstate highways, however, a special commodity hauler is limited to the weight limits in Idaho Code § 49-1001(2).

The only change accomplished by the 1986 amendment was to allow special commodity haulers the right to use either weight table in the weighing of two or more consecutive axles on non-interstate highways. The term, "National System of Interstate and Defense Highways" means interstate highways. 23 U.S.C. 101(a) and 23 U.S.C. 103(e). 23 U.S.C. 127 is only concerned with Idaho's weight limitations on interstate highways.

With reference to Idaho's special commodity weight limitations on the interstate highways, it is our opinion that there has been no change from January 1, 1975, to the present. It is our opinion that Idaho's vehicle weight laws with respect to the United States federal interstate and defense highways are in compliance with 23 U.S.C. 127.

Additionally, it should be noted that the legislative intent of the law that went into effect on January 1, 1975, provides in part as follows:

It is also the finding of the legislature that the economy of the state of Idaho is largely dependent upon products of the forests, agriculture, livestock, mining and related products produced from the earth which must generally be transported by motor vehicles operating upon the highways within the state for reasons that water, rail and air transportation are available to only a few areas of the state of Idaho, and the above mentioned products are generally loaded at locations where weighing devices are not available, and fairness, justice and the public interest dictate that vehicles transporting the products mentioned in § 49-901(c), Idaho Code, be given a reasonable and adequate weight tolerance as is provided when transporting such products, and, in order that all parts of the state of

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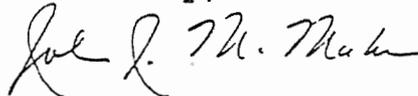
Idaho have at their disposal adequate transportation facilities, it is necessary to utilize the interstate and national defense highways constructed under the Federal Aid Highway Act of 1956.

Part of Idaho's grandfather rights for vehicle weight limitations thus includes a reasonable and adequate weight tolerance for special commodity haulers operating on the interstate system.

Additionally, the law in effect on July 1, 1956, allowed the Commissioner of Public Works (now the Idaho Transportation Board) to issue overweight permits that would allow a vehicle or combination of vehicles to operate at a load in excess of the weight limits specified in Idaho Code § 49-1001.

Because we find that Idaho Code § 49-1001 complies with 23 U.S.C. 127, your other questions need not be addressed.

Sincerely,



JOHN J. MCMAHON
Chief Deputy Attorney General

JJM/kjb