IDAHO TRANSPORTATION DEPARTMENT'S
NEGOTIATED RULEMAKING HEARING
REGARDING PERMITTED TRUCKS IN IDAHO

MODERATOR: STEPHEN BYWATER

June 29, 2016
12:00 p.m. – 7:30 p.m.

TRANSCRIBED BY:

KAMRA TOALSON, CSR No. 756
Notary Public
MR. BYWATER: Good afternoon. We would like to welcome you to the Idaho Transportation Department's Negotiated Rulemaking Meeting regarding the proposed changes to five of the rules governing the permitting process and safety requirements for loads that are required to operate using an overlegal permit.

My name is Steve Bywater, and I will be the moderator for today's meeting. We are here to receive comments today on the proposed changes to the five rules from all interested persons, and we thank those of you that are here at the outset for your interest and participation.

Just a reminder as to why we are here. The Transportation Department has initiated this process at the request of Governor Otter and the Idaho Transportation Board. The areas of emphasis outlined by the governor and the Transportation Board are; number one, safety, including driver qualifications and equipment needs; number two, regional harmonization; number three, improving the permitting process; and number four, improved customer service.

The ITD staff prepared a summary of 17 concepts raised in the comments received during the first round of this negotiated rulemaking process. Those 17 concepts were presented to the Idaho Transportation Board at a June 8th special meeting of the board. The Transportation Board approved those 17 concepts with the request of Governor Otter and the Idaho Transportation Department. The areas of emphasis outlined by the governor and the Transportation Board are; number one, safety, including driver qualifications and equipment needs; number two, regional harmonization; number three, improving the permitting process; and number four, improved customer service.

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Thank you, Steve. Thank you everyone for being here and participating. Again, my name is Ramon Hobdey-Sanchez in the Division of Governmental Affairs. I don't want to repeat too much of what Steve already covered here, but I just wanted to talk a little bit about where we've been and how we got to this point.
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1. We had an open comment period for four weeks
   pages of documentation, and that also included a
   public hearing. As soon as the comment period
   closed, ITD staff began analyzing all the comments that
   were submitted, and as a result of that we came up with
   17 categories which are essentially these 17 concepts.
   One thing to keep in mind as you take -- take
   a moment to go through the comments that are submitted,
   if you've had that opportunity. There was -- a lot had
   to do with brakes and equipment and, of course, safety
   since that was one of the main areas we wanted to cover
   overall. So, I'm just going to go through the concepts
   and then kind of discuss how they're connected with the
   rules themselves.

   So, as I mentioned, brakes and equipment were
   a huge issue, and it was raised by many commenters. We
   have, right off the bat, safety inspections and
   enforcement, owner inspections. Number 2 was safety
   inspections and enforcement, law enforcement
   inspections; number 3, equipment and overlegal loads;
   number 4, driver qualifications; number 5, truck
   permitting; number 6, road characteristics; number 7,
   129K regional harmonization; number 8, support for
   existing regulations and rules; Number 9, the term
   "overlegal;" 10, rulemaking process; 11, rulemaking
   scope; 12, enforcement and penalties; 13, reasonable
   access; 14, data collection; 15, funding; 16, local
   authority; and 17, allowable vehicle size.

   I'd also like to bring to people's attention
   that in Chapter 12 there are several federal regulations
   that are incorporated, and the first are 49 CFR 396.17,
   then 396.19, 396.25, and additionally the reference to
   Federal Motor Carrier Safety Regulations, Federal Motor
   Vehicle Safety Standard number 21 in terms -- and that
   regards -- and that is in regards to maintaining your
   brake system in the condition that it was originally
   manufactured. So, it's important, and I'm sure we'll
   have plenty of time to discuss those federal regulations
   that are now being incorporated.

   Moving on, 39.03.15 deals with the
   harmonization of 129K on the interstates, as well as
   truck permitting. So, that's concept number 7, 129K
   regional harmonization, and concept 5, truck permitting.

   We're onto Rule Number 39.03.22. This deals
   with brakes, as well, and driver training, specifically
   concept number 3, equipment, and concept number 4,
   driver qualifications.

   Lastly, we have 39.03.23. This deals with the
   revocation of permits due to an out-of-service order by
   the FMCSA. This is in regards to concept number 12,
   enforcement and penalties.

   Additionally, I would just like to mention
   that during the regularly scheduled board meeting
   earlier in the month, I did propose three different
   options to the board on how to deal with the "overlegal"
   term. This was something we received many concepts from
   people across the spectrum, and the three
   recommendations were that we change the rule or change
   the term in the five rules that we're working on now, we
   open up all the rules where the term is used, which is
   approximately 20 different IT rules, and the word's used
   almost 140 times, or we wait until next year giving
   staff an amount of time that we can do some thorough
   research, decide what terminology is appropriate to use,
   and move forward with that change next year.

   Option three is the selection and the route
   that the board chose to go, so we're not going to be
   addressing the term "overlegal" this year, but we will
   be -- we will be taking that on next year. I think that
   sums it up for me.

   MR. BYWATER: Thank you, Ramon. Appreciate
   that. So, as we begin opening up the meeting for
   comments, here in the headquarters forum there is a
   podium set up on camera and on microphone where we will
   be receiving comments here, and there's a line of chairs
   behind the podium where commenters can sit in order to
   preserve their place in line to comment as we work our
   way through the commenters.
My plan is that as comments are made and discussion -- the discussions can then be held and questions can be answered by the subject matter expert panel, and discussions and negotiations had between the commenter and the members of the panel, as well as with any other commenters that are appearing here or that are appearing in any of the districts around the state, so as the comments are made, I'll be asking for a response or discussion from the panel members. I'll also be asking if there's anyone in the audience here or in any of the districts that would like to respond to the comment that's been made. I will need you to raise your hand or make some indication so that I know that you're interested in responding to the comment, and then we'll get you to the podium here or to the podium in the districts.

So, that being said, I think what I'd like to do now is to just cycle around through the districts to see if we have anyone present. At this point in time, I don't have anyone who is seated in the commenter chairs here in the ITD headquarters auditorium, so I'm going to ask whether there is anyone present in District 1 at this point in time who would like to make a comment or commence discussion of the rules. I'll be asking you to identify yourself by name, tell us who you represent, and which rules or concepts you would like to discuss.

So, in District 1, is there anyone at this time that would like to step up to the podium?

MS. KEOUGH: Hi, Steve. My name is Shawn Keough. I'm here today on behalf of the Associated Logging Contractors. Our key person of contact, Jerry Deckard from CapitolWest Public Policy, is unable to participate today.

MR. BYWATER: Thank you.

MS. KEOUGH: Thank you. I want to thank all of you who are there for this effort. Also due to some miscommunication spoken internally within the ALC and on the ITD side of the equation, others that may have been participating today may not have gotten the information about the time change or that elimination of the ability to phone in or participate through the internet. So, all totaled, those interested people that are members of the Associated Logging Contractors, and the Associated Logging Contractors as an organization, will be working towards submitting comments by the July 8th deadline.

I, personally, and the ALC, as an organization, appreciate the effort in this process in addressing the governor's letter and his act of a review of safety concerns in particular. So, that's it for now.

MR. BYWATER: Thank you, Shawn. At this point in time, do you have any questions or concerns you'd like to direct to any of the members of the panel, or will we just -- we'll be awaiting your written comments?

I appreciate your comments on the time change and some of the lapses in communication. We've done our best to try to repair that. But I think you're right. I think there are some folks who didn't realize we were starting at noon, and hopefully we'll still have some of them up later. So, is there anything you'd like to direct at the panel at this time?

MS. KEOUGH: Well, thank you, Steve. I appreciate that. I have a question, if that's appropriate.

MR. BYWATER: It is.

MS. KEOUGH: It's in regards to 39.03.12 and the new language specifically in 050 regarding safety inspection requirements for oversized vehicles and/or loads. I am wondering if -- I'm wondering what the differences are from today's -- what's in law and rule today and whether this is additive or not.

MR. BYWATER: I think I'm going to ask Major Reese to respond to that, so Major Reese.

MAJOR REESE: Hi, Shawn, it's Major Reese from the State Police. This is not additive into what is required at this time. The first four on there really are just clarifying what's already adopted in the Idaho State Police's Motor Carrier Rules, so for regulated carriers, that's already required.

I should also mention in number 5 in that section under "exemption," that one of the things that we talked about and we've discovered we need to clarify is that the exemption there applies to all exemptions that currently exist in Idaho Code 67-2901B where there's 13 broad exemptions from the Motor Carrier Rules, and we're going to change the language, I believe, so that it clarifies that more clearly.

The way that it's worded right now, it just talks about the agricultural exemption, and it doesn't mention the other 12, so that's one thing we wanted to clarify. But as far as the other requirements, they're not anything extra. They've already been in place, but we just felt prudent to add it to the code -- or, excuse me, to the rule at this time on the oversized loads.

MR. BYWATER: Now, Shawn, before we go back to you, I'd like to just ask Alan if he has anything to add from the department's perspective on those comments.

MR. FREW: No. Major Reese and I have discussed this, and we're in agreement that that section, that 50 Subsection 5 on the exemptions, we...
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1. should clarify that language to include all those exemptions.
2. MR. BYWATER: Very good. Shawn, back to you.
3. Any response?
4. MS. KEOUGH: Well, thank you, Steve. And thank you for the answers. I guess my interpretation of what I heard, then, is that this isn't additive. And so my assumption is, then, that the response to the governor, to paraphrase, is: We don't think we need to add anything safety-wise to what we're currently doing today. Is that fair?
5. MR. BYWATER: Major Reese?
6. MAJOR REESE: Yeah, I would say -- I would say that's fair. We looked to a lot of -- a lot of things, but we just felt prudent to put some of the things that were already going on into this rule just to clarify that, you know, these regulations exist and that they need to be complied with.
7. MS. KEOUGH: Okay. Thank you very much. I appreciate it. And that's all I have at this point in time.
8. MR. BYWATER: Thank you. Appreciate you being here. I hope you can stick around for a little while.
9. MS. KEOUGH: I brought my lunch, so I will.
10. MR. BYWATER: All right. Let's move to District 2 now. Is there anyone appearing in District 2 that would like to make a comment at this point in time?
11. (No verbal response.)
12. MR. BYWATER: I'm not seeing anyone yet.
13. Let's go to District 4. Is there anyone appearing in District 4 that would be interested in making comments, asking questions, or undertaking discussion at this point in time?
14. (No verbal response.)
15. MR. BYWATER: I'm not seeing anyone in District 4 then.
16. District 5, is there anyone appearing at this time that would like to make a comment?
17. UNIDENTIFIED SPEAKER: Well, there's nobody here at this moment that would want to testify.
18. MR. BYWATER: Thank you. I appreciate you keeping me posted on that.
19. Okay. District 6?
20. UNIDENTIFIED SPEAKER: There's no one here that would like to make a comment at this time.
21. MR. BYWATER: Very good. Let's go back to the headquarters auditorium. Is there anyone in the auditorium at this point in time?
22. Jeff, would you like to take the podium and make a comment for us? Could you identify yourself and
23. 1. let us know who you represent for the record. We know -- we know, but we need it on the record. And then tell us what areas you'd like to discuss.
24. MR. MILES: Thank you, Mr. Bywater. My name is Jeff Miles. I'm the administrator for the Local Highway Technical Assistance Council. And so, Mr. Chairman, if you'd bear with me, I wouldn't mind touching on the five.
25. MR. BYWATER: All right.
26. MR. MILES: And I have questions. So, if I take a little time, I hope that's okay.
27. MR. BYWATER: It's not a problem, no.
28. MR. MILES: Mr. Chairman, before I get to the proposed rules, there is one comment that LHTAC would like to make, and I'm not sure exactly which rule it appears in, but in our review we'd like the department to consider legislation for the off-tracking rules.
29. My understanding -- and I'm not a lawyer, I don't play one on TV -- is that rules apply to those Idaho state government organizations and how they exercise their powers. So, for a local jurisdiction to address off-tracking or over length the way ITD does makes it problematic. And it's LHTAC's goal to support the local jurisdiction, and I think that harmonization, even locally, works better for the local jurisdiction in
30. their permitting processes in the future One Stop Shop and for the law enforcement agencies to understand enforcement.
31. For local jurisdiction to address off-track length effectively, they would really have to somehow put in their permit off-tracking guidelines or address each route from an engineering standpoint that takes too much time on a permit-by-permit basis. So, there is a possibility that off-tracking as a statute would set a groundwork for easier permitting and promote future possibility of local control One Stop Shop for permitting. That's a possibility.
32. MR. BYWATER: Thank you. Before you move on, let me just ask, is there any of the experts that would like to comment on that?
33. (No verbal response.)
34. MR. BYWATER: I think we basically have a request for ITD to consider legislation in that area or supporting other groups with legislation; is that correct?
35. MR. MILES: A consideration for that, yes.
36. MR. BYWATER: Yes.
37. MR. FREW: I might just weigh in on that.
38. MR. BYWATER: Alan.
39. MR. FREW: I understand where Jeff is coming
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1. from with his concern and recognize that that would be
2. problematic for the local jurisdictions to tie into that
3. off-track requirement, so we'd certainly take that to
4. the board for their consideration. Thank you for the
5. comment.
6. MR. BYWATER: Thank you, Jeff (sic).
7. MR. MILES: Moving onto IDAPA Rule 39.03.06,
8. the proposal for Section 300 is basically to harmonize,
9. I understand, Mr. Chairman, to harmonize the rule with
10. Idaho Code by reducing restatement. Is there no other
11. change to this rule?
12. MR. BYWATER: Ramon, would you like to respond
13. to that?
14. MR. HOBDY-SANCHEZ: Yeah, I can respond to
15. that. Jeff, as I mentioned, the FAST Act had some
16. language in there that allowed for the change in
17. overhang for auto and boat transporters, so as a result,
18. we had the legislature, just this past session, pass
19. Senate Bill 1261 which adopted that language and allowed
20. for specific overhang on front and rear.
21. What we did here was, you can see we --
22. instead of modifying the language to accommodate the new
23. length, we just struck that completely, because it's
24. already an Idaho statute, and Idaho statutes
25. specifically spell out exactly what those overhangs can

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1. be, so we just make the reference to that code, which
2. was just amended this session.
3. MR. BYWATER: Thank you, Ramon. Reymundo,
4. would you like -- do you have anything to add to that?
5. MR. RODRIGUEZ: No.
6. MR. BYWATER: Okay. Any followup questions in
7. that regard, Jeff?
8. MR. MILES: No. On that basis, LHTAC supports
9. this rule change.
10. MR. BYWATER: Thank you. Thank you.
11. MR. MILES: Mr. Chairman, on IDAPA Rule
12. 39.03.12 --
13. MR. BYWATER: Very good.
14. MR. MILES: -- LHTAC is in support of a One
15. Stop Shop for permitting where decision-making on what
16. roads are available to overlegal vehicles is left to
17. local jurisdiction where permits are more easily
18. obtained through the Idaho Transportation Department in
19. the future. LHTAC does not believe the proposed wording
20. is beneficial to the local jurisdictions or properly
21. fits within the current statutes. In other words, it's
22. circular in reference. I think the attempt here was to
23. put everybody in rule, unless they opted out. The
24. problem with that is --
25. MR. BYWATER: Excuse me, Jeff. Were you

1. talking about 15? Chapter 15?
2. MR. MILES: Oh, excuse me. I jumped. I
3. apologize.
4. MR. BYWATER: Okay. So, let's just continue
5. with 15.
6. MR. MILES: I'll get to that later.
7. MR. BYWATER: Okay.
8. MR. MILES: I'm sorry. 39.03.12, this adds
9. the owner safety inspections with new requirements for
10. longer combination vehicles for standards, federal
11. standards -- that was what was spoken to by Officer --
12. Major Reese earlier, correct?
13. MR. BYWATER: Yes.
14. MR. MILES: And so with previous testimony, my
15. understanding is that is already in statute or in rule
16. with the Idaho State Police? Can someone clarify that
17. for me?
18. MR. BYWATER: Major Reese, can you clarify?
19. MAJOR REESE: Yeah. The only thing that's not
20. in rule, and really it's by oversight, is 49 CFR part
21. 380, which is 03 on there. When we were initially
22. working on this with ITD and we were looking at what we
23. had adopted, when that was passed in the federal rule, I
24. believe in 2004, at some point after that we never
25. adopted it, so we're going to go in this next

1. legislative session and adopt that.
2. It's something that interstate carriers,
3. especially, have had to comply with for years. All the
4. other rules on there have already been adopted and been
5. enforced for many years, so that's -- that's -- part 380
6. is the only exception that talks about the driver
7. training requirements for longer combination vehicles.
8. So, that one -- that one will be something we will adopt
9. this next year.
10. MR. MILES: Mr. Chairman?
11. MR. BYWATER: Yes.
12. MR. MILES: Major Reese, could I further ask,
13. is there -- as an administrator that works in local
14. roadway law, I'm wondering, is there any sort of
15. enforcement avenue to these rules that are in -- that
16. are being mirrored from another rule? In other words,
17. if they're not complied with, is there any remuneration
18. on the person that doesn't comply with the law?
19. MAJOR REESE: Yeah, absolutely. There's a
20. couple of avenues for not complying with these
21. regulations. We adopt these in our Motor Carrier Rules,
22. and violation of those Motor Carrier Rules is a
23. misdemeanor, and the fines can go up to just over $400
24. per violation on those. And then, of course, if they
25. have a permit and then they end up being in violation of
MR. MILES: So, Mr. Chairman, Major Reese, if a certifier was no longer qualified but continued to certify, then the violation would be to the permit holder, or how does that work?

MAJOR REESE: In that case, what we would do is, if they had somebody certifying to this standard, we would have to go in and visit them and then take some action against them. If they were certifying at an interstate level so that we’ve got drivers crossing state lines and we’ve got somebody certified that’s not certified, I would also turn that over to FMCSA for some potential action on their level, as well. So, there could be some action taken against them from FMCSA if they’re trying to certify interstate drivers and they’re not qualified to do that.

MR. MILES: So, at this point, Mr. Chairman, LHTAC supports these changes, although they’re not additives, so I’m not sure they address the concerns voiced by the local jurisdictions for additional considerations for larger vehicles over 105.5.

MR. BYWATER: Okay.  Thank you.

MR. MILES: Yeah.

MR. BYWATER: Thank you.

MR. MILES: No problem. Sorry about me messing up my order there.

MR. MILES: At this point, Mr. Chairman, I’d like to talk about IDAPA 39.03.15. And reiterating what I said is that LHTAC promotes a One Stop Shop where decision-making could be -- for local roads are available to the local jurisdiction in a future setting, and harmonization and promotion of rule changes that will facilitate that is important to LHTAC.

1 that if it's not certified, then I think the permit should also be revoked as a reasoning in 39.03.23, and I'll get to that, so we can speak to it when we there.

MR. BYWATER: Okay. So, before we move onto another rule, we will discuss Chapter 23. You do intend to deal with that directly then; is that correct?

MR. MILES: Yeah.

MR. BYWATER: Yeah. So, okay. I just wanted to give anyone else in the audience, in any of the districts, if they have any comments or followup to the questions you’ve asked regarding Rule 12, a chance -- have you -- have you completed your comments to Rule 12?

MR. MILES: I guess, Mr. Chairman, the only thing I’d add is that as part of the 129,000-pound vehicles, which is not a rule that’s proposed for alteration at this time, LHTAC still believes if the operators are telling jurisdictions that they have antilock brakes, then maybe that’s a standard that would make it comparable across the field. My concern is when you talk about brake systems, then if this brake law is already a part of federal law, we’re not asking for anything as an enhancement for an enhanced vehicle.

MR. BYWATER: Okay.

MR. MILES: So, I go back to my comment for antilock brake systems that was in my original testimony.

MR. BYWATER: Thank you. Now, before we move onto Rule 15, is there anyone in the audience here today that would like to respond or to followup on Jeff's comments regarding Rule 12?

MR. BYWATER: Is there anyone in any of the districts that is interested in commenting or responding to Jeff's comments regarding Rule 12, Chapter 12?

MR. BYWATER: Okay. I don't see anyone appearing so. Thank you, Jeff. Excuse the interruption.

MR. MILES: Oh, no.

MR. BYWATER: Let's move onto the next rule.

MR. MILES: No problem. Sorry about me messing up my order there.

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MR. MILES: At this point, Mr. Chairman, I’d like to talk about IDAPA 39.03.15. And reiterating what I said is that LHTAC promotes a One Stop Shop where decision-making could be -- for local roads are available to the local jurisdiction in a future setting, and harmonization and promotion of rule changes that will facilitate that is important to LHTAC.

LHTAC does not believe the proposed wording is beneficial to local jurisdictions or properly fits within the current statute. And so as I understand it -- and I had some discussion earlier this week so I could get a better understanding with the ITD staff -- it is an idea to allow the locals to include them, but they would have to opt out by saying they do not want it.

One of the problems with anything that falls in rule when you are a local jurisdiction is local jurisdictions don't look to rule for their own lawmaking. Rule, as I understand it -- and I'm not a lawyer, don't play one on TV -- is that a rule does not -- if that law is not legislatively given to that local jurisdiction, that rule does not apply to them.

Where that law gives ITD legislative powers, their rules control those.

So, it becomes complicated, and I can tell you my experience would say that in a very large, if not most situations, a local jurisdiction would not look to rule for handling a permit on their own system. They would look to legislation. So, it becomes problematic, as I read it today.

I do suggest, though, that there is -- there is positive interaction with the Idaho Transportation Department.
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1 Department, at least one jurisdiction, where permitting is shared. And I think that works towards a One Stop Shop situation. And in an effort to promote this, I think the rule could be rewritten so that it states, by agreement, a local jurisdiction can adopt these rules. And that helps the local jurisdiction, because they would be ratifying an agreement through an ordinance or through a motion and a legally binding procedure which makes the rules that they're adopting part of that local code.

11 And I think it's a much better method to go, and it would allow LHTAC to find ways to assist local jurisdictions in their permitting issues by those that would be beneficial to join the Idaho Transportation Department. It would make it possible, and it would make it clear in law. But, remember, I don't purport to be a lawyer, and -- but I find it problematic as written. I probably find that it would probably be thrown out, because it's not traceable to statute for the local jurisdiction, and it's not clear in the fact that they have to opt out or it's enforced. And so when you consider 289 jurisdictions in the State of Idaho, 200 or so of them are cities. Some of those cities have a half a man person. They probably would not be able to research, to some extent, how this rule would interact with them. And I think our goal is for compliance, and our goal is for a good process, not one that confuses.

16 MR. BYWATER: Very good. Let me just ask the subject matter experts if there's anyone on the panel that would like to respond.

7 I appreciate your comments and your suggestions. You really haven't asked a question. But 9 is there anyone on the panel at this point in time that would like to respond? Alan?

11 MR. FREW: Sure. Jeff, first off, thank you for being here today, and I appreciate the comments, and we greatly appreciate the dialogue that we had earlier this week and that is continuing. That's really the purpose, and that's where we'd like to be. We've enjoyed a very close working relationship with the local jurisdictions, and we want that to continue. So, we're certainly open to the dialogue and to your suggestions and your thoughts as we shape this going forward, and we will present your ideas, your thoughts, your concerns to the board for their consideration.

23 MR. BYWATER: Thank you, Alan. Any response, Jeff? Or do you want to move onto the next rule?

25 MR. MILES: I think I -- I think that covers for that what I have today.

5 MR. BYWATER: All right. Before you do that, let me just ask if there's anyone else here in the headquarters auditorium that would like to comment or respond with regard to Jeff's comments on Rule 15 or Chapter 15 of the rules.

7 Is there anyone in any of the districts that has appeared that would like to step to the podium in the district and make a comment or a response to Jeff's discussion of Rule 15?

11 (No verbal response.)

12 MR. BYWATER: Thank you. Okay.

14 MR. MILES: Mr. Chairman, in regards to IDAPA rule 39.03.23 --

16 MR. BYWATER: 22 or 23?

17 MR. MILES: Did I have it wrong? 23? Or is it 22? I, currently at this moment, don't have a comment on 22.

19 MR. BYWATER: Thank you. Okay.

21 MR. MILES: On 23 -- so, Mr. Chairman, with the testimony of -- I mean, the input from Major Reese, LHTAC would suggest that failure to have a valid owner safety inspection, where the qualification is expired or invalid or the certification is not present, would be grounds for termination of that permit for that power unit. As called out in section, I think it's 100-01, and I could be wrong --

4 MR. BYWATER: Yes.

5 MR. MILES: So, with that, Mr. Chairman, I think that those three items, as called out in the previous rule, owner safety inspection and certification being valid, the owner's inspector qualification being valid, since it's a self-certified, there has to be a higher onus in our mind, because you are asking industry to self-policing. So, in every case, if they do not meet the standard, then the permit should be invalid, and that includes [unintelligible], although I think that Major Reese covered that that might be a law violation in another place, so...

16 MR. BYWATER: Okay.

17 MR. MILES: But we think those three reasons should be a reason to disqualify -- or whatever the word is here I'm looking for -- revocation of permit for noncompliance, because this is a serious issue. But when you talk about driver safety, when you talk about brake systems, where in your own reports it says 87 percent of the accidents are due to driver error, a competent driver and competent and well-maintained equipment is critical, because in our
<table>
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<th>MR. BYWATER: Okay. So, just before I hand this off to Major Reese, I just want to clarify. You are supporting the amended -- the one thing that was changed in the rule, but you're finding the rest of that section lacks these three areas, and you would encourage the department to add these three areas that you've pointed out as additional factors that could lead to the revocation of the permit; is that correct?</th>
<th>MR. MILES: So, there are several rules that LHTAC would be much more interested in that weren't selected, and we'll either -- I'll either present that testimony for discussion. When someone else discusses it, I might come up, and or we will -- we will put that in a written response.</th>
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<td>MR. BYWATER: Okay. Major Reese, do you have a response?</td>
<td>MR. BYWATER: Okay. That would be great, and you're free to come back in and join into the comment line at any point in time. So, I appreciate your consideration in that regard. Let me just ask, is there anyone in the auditorium here at headquarters that would like to respond to Jeff's comments and suggestions regarding Chapter 23?</td>
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<td>MAJOR REESE: Thanks for your comments. That's definitely -- I've made some notes here, and that's definitely something that we'll discuss. Thank you.</td>
<td>MR. MILES: Thank you very much. Appreciate it.</td>
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<td>MR. BYWATER: Great. Anything else, Jeff?</td>
<td>MAJOR REESE: Thanks for your comments.</td>
</tr>
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<td>MR. BYWATER: Okay. Let's go to District 4. Is there anyone in that's definitely something that we'll discuss. Thank you.</td>
<td>MR. MILES: Thank you.</td>
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Okay. Let's take a break until 1:00. We will adjourn until then and reconvene again seeking comments. Thank you. Thank you all for your interest and patience.

District 1 -- we did have one commenter from District 1. At this point in time, I'm going to ask be made to the five proposed rule changes before they and make a determination of what, if any, changes should review the comments received and the negotiations held the comment period on July 8th, the department will Permit Rulemaking."

For those of you who may have just joined us, let me give you a brief introduction to what we're doing. We want to welcome you to the Idaho Transportation Department's Negotiated Rulemaking Meeting regarding the proposed amendments to five of the department's IDAPA rules governing the permitting process and safety requirements for loads that are required to operate under an overlegal permit.

My name is Steve Bywater, and I am the moderator for today's meeting. We're in the process of receiving comments and answering questions, conducting discussions on the proposed changes to the five rules. We have participants from around the state and here at ITD headquarters. We thank you for your interest and participation.

Just to briefly review the five rules under discussion here today for possible amendment are IDAPA Section 39, or Title 39, Section 3, Chapter 6, which deals with the allowable length and overhang; Chapter 12, which deals with inspections and brake requirements; Chapter 15, which deals with the 129,000-pound harmonization on interstates and with truck permitting; Chapter 22, which deals with brake requirements and driver training; and Chapter 23, which deals with the revocation of permits due to an out-of-service order by the FMCSA.

We've had some good comments and discussions so far. I want you to remind you that the language of the specific proposals can be found by visiting the rulemaking page on the ITD home page by clicking the rulemaking tab on the right labeled "Commercial Truck Permit Rulemaking."

Following this meeting and after the close of the comment period on July 8th, the department will review the comments received and the negotiations held and make a determination of what, if any, changes should be made to the five proposed rule changes before they are presented to the board again for further consideration.

At this point in time, I'm going to ask District 1 -- we did have one commenter from District 1.

Okay. Let's take a break until 1:00. We will adjourn until then and reconvene again seeking comments. Thank you. Thank you all for your interest and patience.

(A break was taken.)

MR. BYWATER: I apologize. The break went a little bit longer than I said. I'd try to keep it to the announced time, but I appreciate those of you that are still in attendance.

For those of you who may have just joined us, let me give you a brief introduction to what we're doing. We want to welcome you to the Idaho Transportation Department's Negotiated Rulemaking Meeting regarding the proposed amendments to five of the department's IDAPA rules governing the permitting process and safety requirements for loads that are required to operate under an overlegal permit.

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At this point in time, I'm going to ask District 1 -- we did have one commenter from District 1.

MR. BYWATER: Thank you. Okay. We do have some people in the auditorium at headquarters. Is there anyone here now that would like to make a comment at this time regarding the rules or the concepts, the things that were adopted or that were not adopted?

MS. LYON: Hi.

MR. BYWATER: Thank you for being here. And could you please state your name and who you represent.

MS. LYON: Absolutely. My name is McKensey Lyon. I am with the Right Truck for Idaho Coalition, and while we will be submitting a formal written document before the 8th, I just wanted to bring it into the conversation that we do find some ambiguity in the out-of-service language, and I know that there are conversations happening currently, but I'm making sure that that language truly reflects the intent of ITD and clarifies for carriers and drivers that exact language, so we're working to identify exactly where we think changes should be made, and we'll get those over to you in writing. We just wanted to let you know that that was our intent in this process so far.

MR. BYWATER: Thank you, McKensey. Let's just clarify so that we make sure I'm understanding. This relates to Chapter 23, the one amendment to that -- proposed amendment to that rule which talks about
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1. out-of-service orders from the Federal Motor Carrier Safety Administration, right?
   2. Safety Administration, right?
   3. MS. LYON: Yes, sir.
   4. MR. BYWATER: Okay.
   5. MS. LYON: Our understanding is that the intent of that language is to reference motor carriers that have been deemed out of service by the Federal Motor Carrier Safety Administration and not necessarily any single out-of-service type citation that may happen roadside for a driver or a vehicle by ISP or ITD.
   6. MR. BYWATER: Thank you. I appreciate that.
   7. Major Reese, I think you've probably been involved in this discussion. Would you like to respond?
   8. MAJOR REESE: Yes. Alan and I discussed this when we figured out there was confusion over that, and we do plan on changing the language in there referencing part 386 which is where those out-of-service orders are referenced in the regulations so -- and what we're talking about here is companies that -- whose -- the violations and the fatal crashes, things like that they've been involved in, are so severe that FMCSA issues that company an out-of-service order.
   9. In Idaho, I can tell you over the last probably decade, there's been years where we've had no Idaho carriers that have been placed out of service,

1. Idaho-based carrier, and maybe the most I've seen is maybe two or three on a bad year, which is pretty rare, so it doesn't happen very often, so... And that's the ones we're talking about, and we do plan on clarifying that.
   2. MS. LYON: Excellent. Well, and we will, as I said, put our thoughts into writing and submit those before the deadline.
   3. MR. BYWATER: Excellent. Thank you.
   4. MS. LYON: Thank you.
   5. MR. BYWATER: Appreciate it.
   6. MS. LYON: Of course.
   7. MR. BYWATER: While we have a chance, is there anyone out in any of the districts or any of the other panel members that would like to speak to McKensey's comments regarding Chapter 23?
   8. (No verbal response.)
   9. MR. BYWATER: I don't see anyone stepping forward in any of the districts. Very good. Well, that's -- that's a good example of how negotiated rulemaking should work. The language is there, and the people that are drafting it are looking at it from one direction, and then we get some comments from folks who look at it from another direction and point out the language that can be and needs to be clarified, so I appreciate that process being undertaken.
   10. Is there anyone else here in the auditorium at this time that would like to make a comment?
   11. (No verbal response.)
   12. MR. BYWATER: We have -- we have a lot of time scheduled for this meeting, and I -- Alan?
   13. MR. FREW: Steve, if we could, I don't -- I don't know if Shawn is still available in District 1.
   14. MR. BYWATER: District 1. Let's just ask. Would you have something you'd like to bring up?
   15. MR. FREW: Yes, I would like to clarify just a little bit.
   16. MR. BYWATER: Shawn Keough, are you still available in District 1? Alan Frew indicated that he has something he'd like to comment on.
   17. MS. KEOUGH: Hey.
   18. MR. BYWATER: Great.
   20. MR. BYWATER: Hi, Shawn. Thank you for coming forward. Alan just indicated that he had something he'd like to bring up. So, Shawn or Alan, go ahead.
   21. MR. FREW: So, Shawn, yeah, this is Alan down here in less beautiful Boise. Very beautiful up where you're at. And I'm sorry we're not all there together.
   22. But you made a comment earlier about -- or asked a question about whether or not in Rule 12, 39.03.12, if those additions were additive. And you asked that question of Major Reese, and Major Reese responded that they were not.
   23. What we're trying to do with this -- with this rulemaking, Shawn, is underscore the fact for our permit holders that their -- that they also fall under the motor carrier rules promulgated by the Idaho State Police. So, we're going back and forth, and we're sharing ideas, resources, and citations back and forth on these rules.
   24. While they're not -- they don't provide an additional administrative or enforcement burden to these motor carriers, what we're trying to do is underscore the fact that many of the vehicles operating under an overlegal permit or a special permit would still have to follow many of the same motor carrier rules that are promulgated by the Idaho State Police, particularly in those inspection requirements, the requirements around brakes and so forth.
   25. So, did you have any other questions or concerns about those rules as we've proposed them?
   26. MS. KEOUGH: Well, thank you, Alan, for that question. And on behalf of Associated Logging Contractors, again, Jerry Deckard is the lead contact on...
that, and he's not available today.

The ALC lined up several things in their original comments into this process that they were hoping to have addressed in regards to safety, which was also what the governor's focus was, and it appears, at least at this point today, that all that's really been addressed of those issues is basically -- and please correct me if I've missed something, but basically it's status quo that what we're doing today is fine and there's no room for improvement.

And none of the issues -- or I don't think any of the issues, really, that Associated Logging Contractors brought up -- there were 11 different ones that were not only driver safety-related but road safety-related that appeared to be -- I think the message I'm hearing is: Everything's just fine. And so I think therein is the concern that the Associated Logging Contractors will have and will probably likely detail more in their comments by July 8th.

MR. BYWATER: Okay. Thank you, Shawn.

MR. FREW: Thank you, Shawn.

MR. BYWATER: Alan?

MR. FREW: So, as part of this, though, one of the things that we did that is additive is the piece that Major Reese indicated that they would be adopting.

I think it was part 380. And I would turn that over to Major Reese to kind of -- to elaborate a little more of what that does.

MAJOR REESE: Yeah, let me clarify that. Part 380 addresses training for long combination vehicle drivers, and it's something that the interstate carriers have had to comply with and the companies of other conversations have been complying with, and we've never adopted it for intrastate transportation, and it clearly -- more clearly defines what the carriers have to do as far as training their drivers to operate those longer double and triple combination vehicles. So, that is one change that we are going to be making this year, and we're going to bring that rule into be adopted with some other normal changes that we need to do, term-order carrier rules, this year.

So, that's one thing with your question earlier that I didn't clarify that I should have, is that that change is happening. That is the one change that's happening. The other things that we reference in here are things that we've already adopted.

The other thing that I guess I should mention when it comes to enhancing some of these regulations, one of the problems that we have is if we -- if we try to make a rule that is more stringent than the federal rule, we have a potential preemption issue with the federal regulations, and the states have a pretty high standard to meet.

If we want to make something more stringent than it is in the federal regulations at the state level, we have to be able to show that that -- that that's in the best interest of safety and that it doesn't severely impact the carriers, so that's something that we have to be careful of, is that we don't start interfering with that federal preemption standard, as well, when we start looking at changing some of those things.

MR. BYWATER: Shawn, any followup to that?

MS. KEOUGH: Not at this time.

MR. BYWATER: Thank you.

MR. FREW: So, could I just followup maybe --

MR. BYWATER: Alan?

MR. FREW: -- with Shawn and ask, was there something that we missed -- that you think we missed that is of concern to the ALC?

MS. KEOUGH: I, again, will be conferring with our key point person, Jerry Deckard, and our president, Steve Sherich, and our ALC board, and submit those comments by July 8th.

MR. FREW: Okay.

MR. BYWATER: Very good. Thanks, Shawn.

MS. KEOUGH: And I do want to acknowledge, again, an appreciation on the part of the ALC for this effort. We do appreciate that. Thank you.

MR. BYWATER: Thank you. Okay. While we're at District 1, I'll just ask the monitor there in the room, is there anyone else in the room at this point in time that would like to make a comment?

UNIDENTIFIED SPEAKER: Just Shawn and I. That's it.

MR. BYWATER: Okay. Thank you, sir.

Let's go to District 2. Is there anyone in District 2 that would like to make a comment?

UNIDENTIFIED SPEAKER: No comments at this time.

MR. BYWATER: Thank you. Appreciate you being there for us.

District 4, is there anyone present there that has arrived now that would like to make a comment?

UNIDENTIFIED SPEAKER: We have one in attendance, but he does not wish to make a comment.

MR. BYWATER: Very good. Thank you.

Appreciate that.

And District 5, anyone in attendance that
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1. would like to make a comment?
2. UNIDENTIFIED SPEAKER: We have no comments at this time.
3. MR. BYWATER: Is there anyone in attendance besides you?
4. UNIDENTIFIED SPEAKER: No one is -- no one's here except for me.
5. MR. BYWATER: Okay. Thank you.
6. So, let's go now to District 6.
7. UNIDENTIFIED SPEAKER: No one here except me.
9. Back to the headquarters auditorium. Is there anyone that has arrived now that's interested in making a comment at this point in time?
10. (No verbal response.)
11. MR. BYWATER: All right. I don't see any hands going up, so I think rather than just have a bunch of dead air, I think I'm going to call for another break, ten-minute break, at this point in time, and then we'll see if we have any more commenters that have arrived.
12. So, thank you for being with us. We will re-adjourn in ten minutes.
13. (A break was taken.)
14. MR. BYWATER: Let's get started. Is there anyone in the auditorium here at this point in time here at headquarters that would like to make comments at this point in time?
15. (No verbal response.)
16. MR. BYWATER: Okay. Okay. We're back on the record. Those of you that have -- for those of you that have just joined us, I remind you that we are undertaking a negotiated rulemaking process with the Idaho Transportation Department for potential amendments to five of the department's IDAPA rules.
17. I'm not aware of whether or not there is anyone in any of the districts at this point in time that have arrived that would like to make comments. Let me go through the districts one by one and check.
18. District 1, is there anyone new there? Anyone interested in commenting at this point in time?
19. UNIDENTIFIED SPEAKER: No, there is not.
20. MR. BYWATER: Thank you.
21. District 2?
22. UNIDENTIFIED SPEAKER: No, sir. No one from the public has arrived.
23. MR. BYWATER: Thank you very much.
24. District 4?
25. UNIDENTIFIED SPEAKER: Our one attendee has departed, so no one else is here at this time.

1. And then, secondly, if you could let me know, just step to the podium and let us know that you have someone there now that is interested in making a comment, we'll wait until we hear from you, or if we have someone here in headquarters, someone new that comes in that's interested in commenting, we will call the meeting back to order. But until then, just please stand by, stand down. Okay. Thank you all.
2. (A break was taken.)
3. MR. BYWATER: We're live. Okay. Let's get started again. We've been on an extended break waiting for any other interested persons who would like to come in and comment. We do have some folks here now at ITD headquarters who have expressed an interest in making more comments, so I'd like to get going again.
4. Let me just make sure that we're coming through to all the districts. If I can get the district -- the department representatives that are in the hearing rooms or the meeting rooms in each of the districts to just step up to the podium and give me a thumbs up if you are hearing us.
5. Okay. I don't see anybody in District 1 or District 6. Thank you. The other districts. District 1, can you hear me?
6. (No verbal response.)
MR. BYWATER: District 6, is there anyone present in that meeting room?

(No verbal response.)

MR. BYWATER: I am a little bit concerned, because I know Shawn Keough was at -- was attending at District 1 and planned to still be in attendance at this point in time, and I wanted to be sure she was able to hear the comments that are made. Michelle is not --

UNIDENTIFIED SPEAKER: I'll e-mail Scotty.

MR. BYWATER: Would you -- I just want to make contact with someone in District 1 and make sure that --

okay. Let's get started then.

This is just a reminder that we're having a negotiated rulemaking session regarding the proposed amendments to five of the department rules governing the permitting process and safety requirements for loads that are required to operate using an overlegal permit.

At this point in time, I understand that Stuart Davis from the Idaho Association of Highway Districts -- Stuart's present, and he would like to make some comments. Thank you, Stuart. Step up to the podium, if you would, and if there's a particular rule you want to talk about, let us know so we can put it up on the screen, and -- a rule or rules.

MR. DAVIS: Thank you, Mr. Bywater. The specific rule that I will chatting about is 39.03.15.12 which I believe is the scope in -- forgive me. I rarely delve into rules, and so --

MR. BYWATER: I understand.

MR. DAVIS: -- my knowledge is statutory authority, and so this is very new to me, so...

MR. BYWATER: Very good.

MR. DAVIS: My name is Stuart Davis, and I am the executive director of the Idaho Association of Highway Districts. I have been working for the association for 25 years. Our association represents 12,000-plus miles of highway in the State of Idaho. Most people are surprised to learn that over 80 percent of the population of this state resides in a highway district, and growing up in Idaho Falls I had no idea what a highway district was until I came to Boise in 1986 on my way to law school, which is a different story that never happened.

I'd like to preface my remarks, Mr. Bywater, and community members, by saying how incredibly appreciative I am for this opportunity to work with you on these rules. ITD staff, specifically Mundo and Ramon and Molly and Alan, have been absolutely wonderful to work for and with on this, and Scott Stokes has bent over backwards to make sure that every accommodation has been made. And I think that this -- the way you've done this videoconferencing and things like that is indicative of your goal to have as much input before you make these rules as possible, and so I commend the staff for this. They have done an excellent job.

Unfortunately, I'm going to have to ask your support in removing this 02 rule. I believe, along with the City's and the County's Association and our legal team, that ITD lacks the statutory authority to permit truck traffic on the local system. I recognize that this is an attempt by Mr. Frew, and I'm very, very grateful for him to come up with a One Stop Shop sort of mechanism. However, it is my wish, and that of the city's and county's, is to do this either statutorily or a combination of statutory changes, rules and regulations, and/or memorandums of understanding or joint power agreements.

This is a huge amount of information to cover. It's a huge deviation from current policy, and we would feel much better if we were able to participate in this process on the statutory level. My association and that of the city's and county's stands ready and willing to take the ball and run with it and work on legislation that takes care of your needs and ours and would be willing to sponsor said legislation at the next session.

I firmly believe that we can come up with conciliatory ideas and language that we could put into a statute. The statute process, I believe, is much more open, although I have commented on how open you've made this process, but the vast majority of my constituents don't understand the rule process, don't have access to the rules, don't understand the rules, and, unfortunately, until we started down this path two months ago, their executive director had no idea about how the rule process worked.

Statutory process gives us -- at least for hearings, statutory process allows clearly a common ground in which we can all work together on, and I would feel much more comfortable if that were the way to go. I further would ask you as ITD works on this process and also on redoing the trucking handbook that the locals be included in that trucking handbook. It's clear to me that that document that this department produces is a beautiful document, and it's read by the truckers, and it would be wonderful if we could express some of our concerns and opinions inside that trucking manual.

Again, we would love to collaborate on this work in concert with ITD to put this into a statute. And I do want to say one last comment, Mr. Bywater, is I...
have a letter here I have submitted to -- I believe to
Mundo and to Ramon via e-mail signed by the cities, counties, and highway districts, and we specifically allude to the various sections in here in which we oppose.

So, in closing, thank you for this opportunity. I really -- I'm overwhelmed at how all of us have come together on this, even the cities and the counties and the highway districts. We frequently have the same goals, but we have come together with this department. We met with Alan and some of the other people the other day, and we've made some common ground, and it's working. And the transparency of this process -- I hate political buzz words, but transparency, I think, has been the overriding concern, and you guys have gone a marvelous job at making it transparent.

So, my name is Stuart Davis. I'd like to conclude my remarks by saying thank you. And if you have any questions, I would love to try to answer them.

I also have with me my associate director, Laura Lantz. Laura has worked for me for about six years and has done a wonderful job of learning about this process and helping me.

MR. BYWATER: Thank you, Stuart.

MR. DAVIS: Thank you, Mr. Bywater. Thank you, Mr. Frew.

MR. FREW: I do have a response, and it -- we are also appreciative of the dialogue that we've had together and the open and frank discussion that we've had on this issue, and that was -- that was really the purpose. This was for us, both, kind of a voyage of discovery a little bit, so -- and thank you for your patience with us, and we're looking forward to continuing the discussion. So, that's -- I think it's a good place where we both want to be.

MR. BYWATER: Thank you.

MR. DAVIS: Thank you, Mr. Bywater. Thank you, Mr. Frew.

MR. BYWATER: Is there anyone else in the auditorium here at headquarters that would like to respond to Stuart's comments or --

(No verbal response.)

MR. BYWATER: I don't see any hands raised.

Let me just ask around the districts. Is there anyone attending in any of the districts, having heard Stuart's comments, that would like to discuss them further or comment on them?

(No verbal response.)
1 as asking the community to pretty much level the playing
2 field with some of the entities that are already using
3 that equipment as they have demonstrated by presentation
4 to the local jurisdictions.
5 MR. BYWATER: Thank you, Mr. Miles. Is there
6 any member of the panel that would like to respond?
7 Major Reese?
8 MAJOR REESE: We did discuss that. And the
9 language that we have on the rule right now, that the
10 brakes have to be maintained to the federal motor
11 vehicle standard that they are manufactured to. The
12 Federal Motor Carrier Safety Regulations for brakes,
13 back in the nineties, started phasing in mandates that
14 ABS brakes be on all the equipment anyway, so any
15 equipment newer than -- I'd have to look it up in the
16 book to tell you, but late nineties, so we're getting
17 close to 20 years now, they were manufactured with ABS
18 brakes on them, the tractors and trailers both. So, the
19 equipment is manufactured, because it has to be, with
20 ABS brake systems. And that's why we use the language
21 in there that we did. It has to be maintained to the
22 standard that it was manufactured to.
23 Now, grant it, there is some older equipment
24 out there that does not have ABS on it if we're using
25 stuff that's, you know, built back in the nineties or

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1 even older than that. We typically don't see that kind
2 of equipment used to transport these larger loads.
3 The problem that we have, if we try to
4 mandate, well, you go retro fit your system now, is,
5 again, that comes back to a preemption issue where we're
6 trying to force more stringent regulations than the
7 federal regulations, and that's really difficult for the
8 states to do.
9 MR. BYWATER: Jeff, any response? Or anyone
10 else on the panel? Ramon?
11 MR. HOBDEY-SANCHEZ: Actually, I have a
12 question for the Major. I'm wondering, many of the
13 comments we received specifically stated not wanting to
14 have any rules or regulations that were stiffer than
15 federal regulations. So, if we were to consider a
16 mandatory requirement for ABS brakes on anything over
17 105.5, would that be a stricter rule than what is
18 currently in place under the federal regulations?
19 MAJOR REESE: It would be if the equipment
20 that they're using was not manufactured with ABS and it
21 was not required for the year it was manufactured, then
22 it would be more stringent than the federal regulation.
23 MR. HOBDEY-SANCHEZ: Yeah. Thank you.
24 MR. BYWATER: Jeff, any thoughts or response?
25 MR. MILES: I appreciate the Major's comments

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1 and, Ramon, your comments. But I am -- I am a person
2 that's not always happy with status quo. I'm very aware
3 that, within even the trucking law itself, there are
4 trucks that are no longer allowed except for those that
5 are grandfathered at a point in time.
6 So, maybe Idaho does something a little better
7 than the national standards, especially when so many of
8 the community says that that's the equipment they've
9 used, and they quote to the local jurisdictions they
10 would only use that equipment, and I think, therefore,
11 it levels the playing field where you're having the best
12 equipment for the places where safety is most requested.
13 So, I understand the comments, and I accept
14 them, but I also think that there's an avenue to move
15 forward. We're ready to move onto the next comment.
16 MR. BYWATER: Before you do, let me just ask,
17 is this anyone in the audience here today at
18 headquarters that would like to respond to the comments
19 regarding the ABS brakes?
20 (No verbal response.)
21 MR. BYWATER: Is there anyone attending in the
22 districts that would like to respond to this comment?
23 (No verbal response.)
24 MR. BYWATER: Okay. No one is stepping
25 forward. Jeff, you --
1 trailer be brought up to and retrofitted to an ABS
2 standard, would that -- would we run a -- bump up
3 against a federal preemption issue?
4 MAJOR REESE: It's -- you know, it's possible.
5 I mean, I'm not an attorney, so they're the people that
6 we'd have to ask. When I've asked that question before,
7 the answer I've been given is, yeah, there's a potential
8 for that. But we would have an easier time selling
9 that, because we can tie it to a bigger safety issue.
10 So, it would be much easier to say that all of the
11 equipment has to have ABS, you can't mix and match it
12 because of this potential reason and it could be a crash
13 causation. That's easier to sell and not fall under the
14 preemption issue.
15 MR. MILES: Thank you.
16 MR. BYWATER: Jeff, any followup on that
17 before you move onto your next concept?
18 MR. MILES: I think that -- just let the
19 comment stand, and I think that you've reviewed it, and
20 hopefully you'll look at it again and talk to industry,
21 because I have to admit, I am not a truck person, so...
22 MR. BYWATER: Thank you. So, you can move on.
23 Thank you.
24 MR. MILES: Under concept 3 -- let's see,
25 concept 4, driver qualifications, that was not a concept

1 part 380 and formalize that, because there are some
2 specific training requirements for drivers of these
3 longer combination vehicles in part 380, and what that
4 does, while it does not, you know, add two years on or
5 something like that, it adds some specific training
6 requirements and time in training before they can drive
7 one of those vehicles, so we had not adopted that. We
8 want to adopt that so that that more formalizes that and
9 helps us in that area.
10 MR. BYWATER: Anyone else on the panel that
11 would like to address that from the department's point
12 of view?
13 So, Major, if I'm hearing you right, you feel
14 like it has been addressed to some extent in the rules
15 by the adoption of the part 380, although maybe not in
16 the same way that some of the commenters suggested it
17 should be changed?
18 MAJOR REESE: That is correct. That is
19 correct. We looked at how we could -- well, frankly, to
20 change the age, I don't believe that can be done by
21 rule. That's going to have to be done by a statute
22 change to begin with. We could not do that in the
23 rules, so I think we're taking it as far as we can in
24 rule, and if the driver's age for these vehicles is
25 increased, that's something that's going to have to

1 that was brought forward by the Idaho Transportation
2 Board, as I understand it. But I have to reiterate,
3 from the local jurisdictions, in the northern part of
4 the state, they were looking for a higher level of
5 qualification for drivers for those vehicles over 105.5,
6 and this concept spoke to it to some extent. And even
7 if you would like to explain so that I could
8 translate -- the staff's recommendation on this rule
9 seemed to raise the bar a little bit, but it wasn't
10 carried forward. If I could get some explanation of
11 that and possibly reconsideration of concept 4.
12 MR. BYWATER: Thank you. Major Reese, we'll
13 start with you.
14 MAJOR REESE: Yeah, I can address that. We
15 looked at this. How can we do this? How can we address
16 the driver, additional training for drivers? And I
17 heard anything from two years of experience to 25 years
18 of age, minimum, things like that. And what we looked
19 at is the current -- currently, the federal regulation
20 is they have to be 21 years old. If they're intrastate,
21 they can be 18. And we ran into a potential preemption
22 issue here, too, because we can't be more stringent than
23 the federal standard unless we have -- can somehow
24 articulate it.
25 So, what we did -- that's why we want to adopt

1 probably take place in our CDL laws in Idaho Code.
2 MR. BYWATER: Jeff, any more thoughts on that?
3 MR. MILES: I guess, to promote consideration
4 of the concept 4 on behalf of local jurisdictions,
5 especially those in northern Idaho, LHTAC would ask that
6 the board consider promoting legislation then for
7 CFR 380 as mentioned.
8 MR. BYWATER: Okay.
9 MR. MILES: Implementation, if I understand it
10 correctly. I might not understand it correctly, so...
11 MAJOR REESE: We are planning on taking it to
12 the legislature this next year, part 380, to adopt part
13 380 in our motor carrier rules so that it will be
14 formally adopted. To go further and to change the
15 driver's age, that, we would have to take to the
16 legislature, and that's something that would have to be
17 changed in Idaho Code in the actual statute. The rule,
18 we can adopt that. We plan on doing that this next
19 legislative session.
20 MR. BYWATER: Okay. Jeff, anything further on
21 that concept?
22 MR. MILES: No, sir.
23 MR. BYWATER: Okay. That's -- let me just
24 see. Is there anyone else present here in the
25 auditorium that would like to speak to that particular
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1 concept, that issue of driver qualifications?
2 (No verbal response.)
3 MR. BYWATER: Is there anyone out in the
4 districts that's observing the proceedings that would
5 like to speak to that issue?
6 (No verbal response.)
7 MR. BYWATER: All right. Is there any further
8 comments or thoughts from the subject matter experts?
9 (No verbal response.)
10 MR. BYWATER: Very good. Jeff, proceed to
11 your next one.
12 MR. MILES: Under concept 5, I believe the
13 department collected a group of fairly random permitting
14 concepts in their consideration. Under that, one of the
15 comments that LHTAC makes, and I make the comment,  
16 because we strive as part of our -- as part of our
17 service to educate and give technical assistance to
18 local jurisdictions. The color-coded maps are difficult
19 to use -- I have to be straightforward with you -- where
20 there are, I believe, at least three and if not four
21 maps that use the same colors.
22 If you choose to bring all of the rules and
23 maps up to a more current standard, consideration of how
24 someone would understand the color maps without being an
25 expert in it would help its usage. It's difficult to
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1. better on the roadways is not always true. And so we
2. did comment that possibly in a greater than 105.5
3. situation, ten axles should be required.
4. Now, I realize that's a deviation from other
5. states that have 129,000, and that's an extension beyond
6. the Bridge Formula B. But if we're going to promote
7. that these are better vehicles, then let's have the
8. whole community get to that level, so that's a
9. consideration that LHTAC would like you to consider.
10. MR. BYWATER: Comments? Reymundo?
11. MR. RODRIGUEZ: Yes, thank you. That would
12. have to be a statutory change, because we have the
13. Federal Formula B under 49-1001, and it does state that
14. with nine axles you can reach 129,000 pounds. The one
15. thing about that, though, is that if you do have a
16. nine-axle combination, obviously, you're going to exceed
17. legal length, and there's a good possibility that with a
18. nine-axle you may not be able to go where you want due
19. to the off-tracking capability of that vehicle. But in
20. order to mandate that we're going to make it that only a
21. ten-axle vehicle can haul this weight, we'd have to go
22. in and change 49-1001.
23. MR. MILES: It couldn't be a permit
24. requirement?
25. MR. RODRIGUEZ: I don't -- I don't think the

1. rule can supercede the code on this.
2. MR. BYWATER: Any other comments from the
3. panel?
4. (No verbal response.)
5. MR. BYWATER: Jeff, any response before I
6. throw it out to the rest of the audience?
7. (No verbal response.)
8. MR. BYWATER: Okay. Anyone else here that
9. would like to comment on that?
10. (No verbal response.)
11. MR. BYWATER: Okay. Anyone else in any of the
12. districts that would like to comment on that concept?
13. (No verbal response.)
14. MR. BYWATER: I think we are hearing you,
15. though, Jeff. You understand that that would be a
16. legislative change, not a rule change, and we'll make
17. sure that that's taken into consideration and presented
18. to the board.
19. MR. MILES: I appreciate that.
20. MR. BYWATER: Next concept.
21. MR. MILES: My last concept is that when I
22. review contracts or rule changes or law, I always look
23. for those things that we did four years ago and then
24. it's been okay. And maybe today that concept should be
25. revisited.

1. One of the things that struck me is -- and I
2. can't tell you what rule it is, but the permit allows
3. 7 percent overload, and I don't know what the law says
4. when it talks about overload. So, in other words, you
5. don't lose your permit or get a ticket until you're
6. 7 percent beyond the load.
7. As we want to allow vehicles that are larger
8. and larger, 7 percent of a 129,000-pound vehicle is over
9. 9,000 pounds. And anybody that works in the industry
10. today should be quite aware that most, if not all, of
11. these competitive organizations are loading with loaders
12. that have weights on them and trucks that weigh
13. themselves and axles that weigh themselves. And when
14. you throw a blanket 7 percent or 15 percent on the
15. combination, it becomes a huge amount of excess, where
16. as I understood 30 years ago when you had to drive to a
17. scale and someone was guessing and you didn't want to
18. hold them too tight, but back on an 80,000-pound
19. vehicle, you're only -- you're talking 4,000 pounds.
20. And we all know that there are states and
21. there are concepts of 144,000 and 150,000, and I don't
22. want these old concepts to go forward. And so if -- and
23. I don't know how it applies to the law if the 7 percent
24. is a reflection in what the law allows for overlegal,
25. but 7 percent on 129,000 pounds is a huge amount of

1. weight, and I don't know if operators could go 10,000
2. over with not knowing it.
3. And so I would ask that be reconsidered for
4. vehicles over 105.5 that would be 7,000 pounds or no
5. more than -- 7 percent or no more than 5,000 pounds,
6. because as these vehicles grow, a percentage could be a
7. phenomenal amount of weight that equal to three or four
8. passenger cars. I think I'd notice three or four extra
9. passenger cars.
10. MR. BYWATER: Thank you, Jeff.
11. UNIDENTIFIED SPEAKER: Steve, if I might -- if
12. I might address that comment. I think the 7 percent --
13. first off, we certify our size and weight enforcement
14. program every year with the feds, and we don't get --
15. there is no tolerance for overloading at all.
16. What the 7 percent refers to is that point at
17. which it's required to be offloaded at the spot at that
18. location. That's when that 7 percent kicks in. And so
19. there is no weight tolerance. There is no -- our port
20. of entry inspectors can write a citation if it's
21. 20 pounds over. They don't typically do that, because
22. that typically exceeds the capability of that scale.
23. That scale is accurate to two-tenths
24. of 1 percent, which is about 20 pounds on 10,000. So,
25. on an 80,000-pound vehicle, we're talking 160 pounds,
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1. plus or minus. And -- but -- so every inspector is different. They have -- every inspector has their discretion at which point to write a citation. But the 7 percent that you're referring to, I believe, is at that point where it would be required to offload on the spot.

That means, for that carrier, they have to bring another vehicle alongside. If this is potatoes, they shovel potatoes from one vehicle over to the other one. Grain, one vehicle over to the other one. They have to offload the excess on the spot, and it has to be done safely and cleanly without creating a littering kind of situation.

So -- and I'm not sure if I'm missing something with your comment.

MR. BYWATER: Anyone in any of the district audience that would like to comment on this concept?

(No verbal response.)

MR. BYWATER: Okay. Anyone else in the audience that would like to comment?

MR. MILES: -- I appreciate that. That helps me out a little bit, because in reading the permit, I wouldn't have read that into it. So, if it's being enforced that it's closely accurate of the scales, I think that's a big understanding on my part that makes it more palatable.

I still would say to myself, as if I was writing rules and stuff, is 7 percent even for

offloading enough of a deterrent when you're having -- 129 is one thing. There are 144,000-pound trucks that may be proposed. So, I would ask the department that maybe there is a percentage where there is a weight where you say, "or 5,000 pounds," because that's a huge amount of volume, 7 -- 9,000 pounds.

UNIDENTIFIED SPEAKER: Yeah. That isn't in the administrative rule either, if I might also interject. That's in Idaho's statute.

MR. MILES: The 7 percent?

UNIDENTIFIED SPEAKER: Yes, sir.

MR. MILES: So, that's a reflection that -- the permit rule that I was reading is a reflection of statute?

UNIDENTIFIED SPEAKER: That's correct.

MR. MILES: Okay.

MR. BYWATER: Okay. Anybody else on the panel that would like to comment?

(No verbal response.)

MR. BYWATER: Okay. Anyone else in the audience that would like to comment on this concept?

(No verbal response.)

MR. BYWATER: Anyone in any of the district meeting rooms that, having heard these comments, would like to reply?

1. (No verbal response.)

2. MR. BYWATER: Okay. It doesn't look like it.

3. Jeff, thank you. Anything else you'd like to bring up?

4. MR. MILES: Mr. Bywater, no. I'd just like to thank the panel and the Idaho Transportation Department for this opportunity. I think this is a great way to move rulemaking and permitting forward, and we look for ITD to be a great partner to LHTAC. So, thank you very much.

5. MR. BYWATER: Thank you for your participation and your cogent comments. Well thought out. Thank you.

6. Okay. Anyone else present now in the quarters, auditorium, meeting room that would like to make a comment at this time?

(No verbal response.)

MR. BYWATER: Could I have the monitors in each of the rooms to step forward to the camera and just give me a thumbs up if you're ready for us to go on another extended break.

7. Okay. I don't see anybody in District 1 or

District 6. Otherwise, thank you, folks.

8. MR. RINDLISBACHER: Mr. Bywater, before we break, could I address the audience?

9. MR. BYWATER: You bet.

10. MR. RINDLISBACHER: In the spirit of LHTAC's comments about rules and some concepts that weren't advanced forward and made into rules, I'd like to address concept number 6, roadway characteristics, if I might.

11. You'll note there were several different comments from folks during our comment period that they would have liked to have seen us address roadway characteristics in the rules, and the department has not done that, and I think an explanation of why we didn't carry those forward might be helpful for folks to understand, so if I could --

12. MR. BYWATER: I think that would be great. In fact, I know there are more than one individual in the audience still here today that made comments in that regard, so I think it would be a good time to bring it up.

13. MR. RINDLISBACHER: Okay. I'll run through those fairly quickly, and if we want to get into further discussion after my remarks, that would be welcomed, as well, but...
MR. BYWATER: Okay. Sounds good.

MR. RINDLISBACHER: I guess I would start by saying with the 129,000-pound request, the Transportation Board has given the department staff some direction on things that we ought to consider prior to presenting back to them a recommendation or findings. And there are several things that are of note that overlap this roadway characteristics piece.

For example, one of the things that we do prior to recommending a route be approved for 129,000 pounds would be an analysis of the bridges along that route to make sure that those bridges were capable of supporting that load and structural integrity of the bridge would not be compromised. In addition to that, the board has asked that we look at travel time concerns.

If these vehicles are going to be traveling on the route, are there times of the day or days of the week when it wouldn't be appropriate for those?

Certainly, one of those considerations is during inclement weather, and the permitting process does not allow for those oversized loads to travel when -- during inclement weather, during a blizzard or those kinds of things. So, that alleviates some of those concerns.

Now, there was an issue -- the board also

would have us look at spring breakup limits, and the roadway might be frozen, or it's in that thaw period when it might be weak and soft, and so the department already has the ability to reduce weight, size, and speed of vehicles, though there's no reason for a rule for that, because the department -- the board already has the ability to regulate that.

There was a question about chain-up and chain-down areas. That also is already within the purview of the department to do that, and those -- there are folks that would recognize that we already have chain-up, chain-down areas in some locations, and we actually have some mandatory chain-up, chain-down requirements on several of our routes when we have a history of having problems with vehicles losing traction and skidding out. So, that -- the board has already asked the department to consider that.

Another concern would be the compatibility of runaway truck ramps. We have runaway truck ramps in locations where we know we have issues with potential runaway truck ramps already. And so that's a discussion point that we would bring before the Transportation Board prior to approving additional loads like 129,000 pounds on routes. We typically put those runaway truck ramps on long grades that are steep where

vehicles can -- if they lose their brakes would increase in speed, and so we provide an opportunity for those vehicles to exit the roadway in a safe manner.

Another question that we addressed with the Transportation Board is pavement conditions. We do a comparative analysis between current legal loads and a proposed load to make sure there's not additional stress on the pavements.

Safety concern is a general topic, but within that general topic, there are a lot of things that the department considers prior to issuing 129,000 pounds for approving that request. For example, the speed limit of the road, the daily traffic volumes, the volume of commercial trucks, roadway geometrics, the horizontal vertical curves, are we going uphill, are we going downhill, are vehicles cuing behind existing trucks as they're traveling those grades? That's something that staff looks at. Other obvious conflict points like numbers of approaches or accident locations that should be considered, certainly the number of lanes that already exist.

One of the requests was for passing lanes. Again, passing lanes, we have methodology, and we have rationale for when we would put a passing lane in and when we wouldn't, and we're currently doing that. We install passing lanes in instances where we have safety concerns with people, large volumes of traffic cuing up behind a slower moving vehicle, and the other vehicles either run into the back of those slower vehicles or pass when they shouldn't be passing.

Sight distance is another concern. Certainly when we design new roadways we consider sight distance, but we also monitor sight distance on existing roads, and where we see it have sight distance problems or concerns, we address that with striping of the roadway. You're all familiar with the "No Passing" barriers. We'll put up "No Passing" signs. We'll put up "Sharp Curve Ahead" and advise of things that would be in advance of a concern. So, we can address that with signing and striping.

The other thing that the board has asked us to look at is, in our current program, prior to permitting 129,000-pound routes, what projects do we currently have programs for bridges and pavements, and what projects would we anticipate might be needed to be programmed? And so those are all considerations that we consider in our current practice.

And so the -- I wanted to give a short explanation of why there isn't an administrative rule just for roadway characteristics. The short answer to
that is we already have existing processes to deal with
those concerns that were brought forward, and we feel
like those processes are adequately dealing with those
issues and concerns. But I'd be happy to entertain
discussion or comment on any of those if folks would
like to visit that.

MR. BYWATER: Thank you, Blake. Is there
anyone in the audience that would like to respond to
Blake's comments regarding the concepts in number 6,
concept number 6?

(No verbal response.)

MR. BYWATER: Is there anyone attending in the
district that would like to respond to Blake's comments
at this point in time?

(No verbal response.)

MR. BYWATER: Okay. I don't see anyone out
there at this point in time. Appreciate that, Blake. I
think we may have a chance to come back to that later
on --

MR. RINDLISBACHER: Okay.

MR. BYWATER: -- as we get more commenters
going. But at this point in time, unless there's anyone
here now that I haven't noticed coming in that would
like to comment at this time, we're going to take
another extended break.

I will leave it to the monitors in the
districts to let me know if someone has come into those
meeting rooms that would like to make a comment, and
then we'll just kind of watch the headquarters
auditorium to see if anyone else comes in here. So, we
will take a break now until we have more commenters.

Thank you.

(A break was taken.)

MR. BYWATER: Those of you who are out in the
districts, this feed is going to shut off at exactly
7:30, so I just wanted to thank you for your patience
and support, your good attitudes.

Anyone that's in a room in a district at this
point in time -- I see a gentleman in District 1. If
you could just come stand at the podium and check in
with us or check out with us. It looks like everybody's
there except for District 6. I think they might have
given up on us.

But, folks, thank you very much. Obviously,
we were planning on a lot more commenters than we had,
but you never know, so we appreciate your willingness to
help and especially your good attitudes in doing it.

So, we're going to shut down the feed now and
close the hearing. We have a couple of folks that have
stayed with us in the auditorium just to make sure that
there weren't any new commenters. We appreciate their
attendance.

But thank you all, and the folks here from
headquarters will be in touch with you as to where
everything goes from here. Thank you.

UNIDENTIFIED SPEAKER: Thanks districts. We
really appreciate it.

(The hearing was concluded.)

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In witness whereof, I set my hand and seal this
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