

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

Page 2

1 MR. BYWATER: Good afternoon. We would like
 2 to welcome you to the Idaho Transportation Department's
 3 Negotiated Rulemaking Meeting regarding the proposed
 4 changes to five of the rules governing the permitting
 5 process and safety requirements for loads that are
 6 required to operate using an overlegal permit.
 7 My name is Steve Bywater, and I will be the
 8 moderator for today's meeting. We are here to receive
 9 comments today on the proposed changes to the five rules
 10 from all interested persons, and we thank those of you
 11 that are here at the outset for your interest and
 12 participation.
 13 Just a reminder as to why we are here. The
 14 Transportation Department has initiated this process at
 15 the request of Governor Otter and the Idaho
 16 Transportation Board. The areas of emphasis outlined by
 17 the governor and the Transportation Board are; number
 18 one, safety, including driver qualifications and
 19 equipment needs; number two, regional harmonization;
 20 number three, improving the permitting process; and
 21 number four, improved customer service.
 22 The ITD staff prepared a summary of 17
 23 concepts raised in the comments received during the
 24 first round of this negotiated rulemaking process.
 25 Those 17 concepts were presented to the Idaho

Page 3

1 Transportation Board at a June 8th special meeting of
 2 the board. The Transportation Board approved
 3 approximately seven of the areas covered in the concepts
 4 for development of amendments to the rules. Those seven
 5 concepts were then incorporated into potential
 6 amendments to five of the department's IDAPA rules. The
 7 Transportation Board then met on June 16th to review the
 8 draft language for the five potential rule changes, and
 9 it is the language of these amendments to the five rules
 10 that are under review here today.
 11 The five rules under discussion here today for
 12 possible amendment are Title 39, Section 3, Chapter 6 of
 13 the Idaho Administrative Procedures Code which deals
 14 with allowable length and overhang, Chapter 12 which
 15 deals with inspections and brake requirements, Chapter
 16 15 which deals with the 129,000-pound harmonization on
 17 interstates and truck permitting, Chapter 22 which deals
 18 with brake requirements and driver training, and Chapter
 19 23 which deals with revocation of permits due to an
 20 out-of-service order by the FMCSA.
 21 The language of the specific proposals for
 22 amendment to the rules can be found by visiting the home
 23 page of the Idaho Transportation Department website and
 24 clicking on the blue rulemaking tab to the right which
 25 is labeled "Commercial Truck Permit Rulemaking."

Page 4

1 Following this meeting and after the close of
 2 the comment period, which ends on July 8th, the
 3 department will again review the comments received and
 4 the discussions held and make a determination of what,
 5 if any, changes should be made to the five proposed rule
 6 amendments before they are presented to the board again
 7 for further consideration.
 8 The procedure for today's hearing is that the
 9 hearing will run from now, 12:00 p.m., to 7:30 p.m.
 10 mountain daylight time. We will be receiving comments
 11 today from those persons appearing at one of the
 12 department's district offices around the state or here
 13 at the department headquarters. We have several subject
 14 matter experts from the department here to answer
 15 questions and seek clarification from commenters, and
 16 every attempt will be made to facilitate discussions
 17 between the commenters and the subject matter experts,
 18 as well as among the commenters.
 19 The subject matter experts appearing here
 20 today are, first, Major William Reese from -- the
 21 operations commander with the Idaho State Police --
 22 thank you for being here, Major Reese -- Alan Frew, the
 23 motor vehicle administrator with the Idaho
 24 Transportation Department; Blake Rindlisbacher, the
 25 engineering services division administrator with the

Page 5

1 Idaho Transportation Department; Reymundo Rodriguez, the
 2 Idaho Motor Carrier Services manager with the
 3 Transportation Department; and Ramon Hobdey-Sanchez, the
 4 Governmental Affairs Program specialist with the Idaho
 5 Transportation Department.
 6 We'll be rotating the opportunity to comment
 7 among all the persons appearing around the state, but it
 8 is important to remember that only one person at a time
 9 should be speaking. When your opportunity to speak
 10 arrives, please identify yourself by giving us your name
 11 and stating who you represent, and then please identify
 12 which rule or rules or concept you wish to address.
 13 At this time, I would like to ask Ramon
 14 Hobdey-Sanchez to provide us with a brief review of the
 15 17 concepts developed from the first round of comments
 16 and discussions with the board that led to the
 17 development of the changes of the five rules we are
 18 discussing today. Ramon.
 19 MR. HOBDEY-SANCHEZ: Thank you, Steve. Thank
 20 you everyone for being here and participating. Again,
 21 my name is Ramon Hobdey-Sanchez in the Division of
 22 Governmental Affairs. I don't want to repeat too much
 23 of what Steve already covered here, but I just wanted to
 24 talk a little bit about where we've been and how we got
 25 to this point.

Page 6

1 We had an open comment period for four weeks
 2 within the month of May. We received over 300-plus
 3 pages of documentation, and that also included a
 4 four-hour public hearing. As soon as the comment period
 5 closed, ITD staff began analyzing all the comments that
 6 were submitted, and as a result of that we came up with
 7 17 categories which are essentially these 17 concepts.
 8 One thing to keep in mind as you take -- take
 9 a moment to go through the comments that are submitted,
 10 if you've had that opportunity. There was -- a lot had
 11 to do with brakes and equipment and, of course, safety
 12 since that was one of the main areas we wanted to cover
 13 overall. So, I'm just going to go through the concepts
 14 and then kind of discuss how they're connected with the
 15 rules themselves.
 16 So, as I mentioned, brakes and equipment were
 17 a huge issue, and it was raised by many commenters. We
 18 have, right off the bat, safety inspections and
 19 enforcement, owner inspections. Number 2 was safety
 20 inspections and enforcement, law enforcement
 21 inspections; number 3, equipment and overlegal loads;
 22 number 4, driver qualifications; number 5, truck
 23 permitting; number 6, road characteristics; number 7,
 24 129K regional harmonization; number 8, support for
 25 existing regulations and rules; Number 9, the term

Page 7

1 "overlegal;" 10, rulemaking process; 11, rulemaking
 2 scope; 12, enforcement and penalties; 13, reasonable
 3 access; 14, data collection; 15, funding; 16, local
 4 authority; and 17, allowable vehicle size.
 5 All of this information is available on our
 6 website on the rulemaking page and the concepts are
 7 available for your review. As a result of the concept
 8 development, we then held a special board meeting that
 9 Mr. Bywater referenced. At that special board meeting,
 10 I presented all 17 concepts to the board, and as a
 11 result, they advanced seven concepts, which we now see
 12 in the form of five draft rules.
 13 Touching -- just touching briefly on the five
 14 draft rules that we have today to discuss, 39.03.06
 15 deals with concept number 17 which was the allowable
 16 vehicle size, and that one also had to do with Senate
 17 Bill 1261 from this past legislative session which was a
 18 result of the FAST Act that passed in December, so this
 19 basically just is allowing those that haul vehicles
 20 and/or boats additional overhang on the front and rear.
 21 Chapter -- or Rule 39.03.12, this deals with
 22 inspections and brake requirements, specifically concept
 23 number 1, safety inspections and enforcement, owner
 24 inspections; number 3, equipment and overlegal loads;
 25 and number 4, driver qualifications.

Page 8

1 I'd also like to bring to people's attention
 2 that in Chapter 12 there are several federal regulations
 3 that are incorporated, and the first are 49 CFR 396.17,
 4 then 396.19, 396.25, and additionally the reference to
 5 Federal Motor Carrier Safety Regulations, Federal Motor
 6 Vehicle Safety Standard number 21 in terms -- and that
 7 regards -- and that is in regards to maintaining your
 8 brake system in the condition that it was originally
 9 manufactured. So, it's important, and I'm sure we'll
 10 have plenty of time to discuss those federal regulations
 11 that are now being incorporated.
 12 Moving on, 39.03.15 deals with the
 13 harmonization of 129K on the interstates, as well as
 14 truck permitting. So, that's concept number 7, 129K
 15 regional harmonization, and concept 5, truck permitting.
 16 We're onto Rule Number 39.03.22. This deals
 17 with brakes, as well, and driver training, specifically
 18 concept number 3, equipment, and concept number 4,
 19 driver qualifications.
 20 Lastly, we have 39.03.23. This deals with the
 21 revocation of permits due to an out-of-service order by
 22 the FMCSA. This is in regards to concept number 12,
 23 enforcement and penalties.
 24 Additionally, I would just like to mention
 25 that during the regularly scheduled board meeting

Page 9

1 earlier in the month, I did propose three different
 2 options to the board on how to deal with the "overlegal"
 3 term. This was something we received many concepts from
 4 people across the spectrum, and the three
 5 recommendations were that we change the rule or change
 6 the term in the five rules that we're working on now, we
 7 open up all the rules where the term is used, which is
 8 approximately 20 different IT rules, and the word's used
 9 almost 140 times, or we wait until next year giving
 10 staff an amount of time that we can do some thorough
 11 research, decide what terminology is appropriate to use,
 12 and move forward with that change next year.
 13 Option three is the selection and the route
 14 that the board chose to go, so we're not going to be
 15 addressing the term "overlegal" this year, but we will
 16 be -- we will be taking that on next year. I think that
 17 sums it up for me.
 18 MR. BYWATER: Thank you, Ramon. Appreciate
 19 that. So, as we begin opening up the meeting for
 20 comments, here in the headquarters forum there is a
 21 podium set up on camera and on microphone where we will
 22 be receiving comments here, and there's a line of chairs
 23 behind the podium where commenters can sit in order to
 24 preserve their place in line to comment as we work our
 25 way through the commenters.

Page 10

1 My plan is that as comments are made and
 2 discussion -- the discussions can then be held and
 3 questions can be answered by the subject matter expert
 4 panel, and discussions and negotiations had between the
 5 commenter and the members of the panel, as well as with
 6 any other commenters that are appearing here or that are
 7 appearing in any of the districts around the state, so
 8 as the comments are made, I'll be asking for a response
 9 or discussion from the panel members. I'll also be
 10 asking if there's anyone in the audience here or in any
 11 of the districts that would like to respond to the
 12 comment that's been made. I will need you to raise your
 13 hand or make some indication so that I know that you're
 14 interested in responding to the comment, and then we'll
 15 get you to the podium here or to the podium in the
 16 districts.

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

Page 11

1 and which rules or concepts you would like to discuss.
 2 So, in District 1, is there anyone at this
 3 time that would like to step up to the podium?
 4 MS. KEOUGH: Hi, Steve. My name is Shawn
 5 Keough. I'm here today on behalf of the Associated
 6 Logging Contractors. Our key person of contact, Jerry
 7 Deckard from CapitolWest Public Policy, is unable to
 8 participate today.
 9 MR. BYWATER: Thank you.
 10 MS. KEOUGH: Thank you. I want to thank all
 11 of you who are there for this effort. Also due to some
 12 miscommunication spoken internally within the ALC and on
 13 the ITD side of the equation, others that may have been
 14 participating today may not have gotten the information
 15 about the time change or that elimination of the ability
 16 to phone in or participate through the internet. So,
 17 all totaled, those interested people that are members of
 18 the Associated Logging Contractors, and the Associated
 19 Logging Contractors as an organization, will be working
 20 towards submitting comments by the July 8th deadline.
 21 I, personally, and the ALC, as an
 22 organization, appreciate the effort in this process in
 23 addressing the governor's letter and his act of a review
 24 of safety concerns in particular. So, that's it for
 25 now.

Page 12

1 MR. BYWATER: Thank you, Shawn. At this point
 2 in time, do you have any questions or concerns you'd
 3 like to direct to any of the members of the panel, or
 4 will we just -- we'll be awaiting your written comments?
 5 I appreciate your comments on the time change
 6 and some of the lapses in communication. We've done our
 7 best to try to repair that. But I think you're right.
 8 I think there are some folks who didn't realize we were
 9 starting at noon, and hopefully we'll still have some of
 10 them up later. So, is there anything you'd like to
 11 direct at the panel at this time?
 12 MS. KEOUGH: Well, thank you, Steve. I
 13 appreciate that. I have a question, if that's
 14 appropriate.
 15 MR. BYWATER: It is.
 16 MS. KEOUGH: It's in regards to 39.03.12 and
 17 the new language specifically in 050 regarding safety
 18 inspection requirements for oversized vehicles and/or
 19 loads. I am wondering if -- I'm wondering what the
 20 differences are from today's -- what's in law and rule
 21 today and whether this is additive or not.
 22 MR. BYWATER: I think I'm going to ask Major
 23 Reese to respond to that, so Major Reese.
 24 MAJOR REESE: Hi, Shawn, it's Major Reese from
 25 the State Police. This is not additive into what is

Page 13

1 required at this time. The first four on there really
 2 are just clarifying what's already adopted in the Idaho
 3 State Police's Motor Carrier Rules, so for regulated
 4 carriers, that's already required.
 5 I should also mention in number 5 in that
 6 section under "exemption," that one of the things that
 7 we talked about and we've discovered we need to clarify
 8 is that the exemption there applies to all exemptions
 9 that currently exist in Idaho Code 67-2901B where
 10 there's 13 broad exemptions from the Motor Carrier
 11 Rules, and we're going to change the language, I
 12 believe, so that it clarifies that more clearly.
 13 The way that it's worded right now, it just
 14 talks about the agricultural exemption, and it doesn't
 15 mention the other 12, so that's one thing we wanted to
 16 clarify. But as far as the other requirements, they're
 17 not anything extra. They've already been in place, but
 18 we just felt prudent to add it to the code -- or, excuse
 19 me, to the rule at this time on the oversized loads.
 20 MR. BYWATER: Now, Shawn, before we go back to
 21 you, I'd like to just ask Alan if he has anything to add
 22 from the department's perspective on those comments.
 23 MR. FREW: No. Major Reese and I have
 24 discussed this, and we're in agreement that that
 25 section, that 50 Subsection 5 on the exemptions, we

Page 14

1 should clarify that language to include all those
 2 exemptions.
 3 MR. BYWATER: Very good. Shawn, back to you.
 4 Any response?
 5 MS. KEOUGH: Well, thank you, Steve. And
 6 thank you for the answers. I guess my interpretation of
 7 what I heard, then, is that this isn't additive. And so
 8 my assumption is, then, that the response to the
 9 governor, to paraphrase, is: We don't think we need to
 10 add anything safety-wise to what we're currently doing
 11 today. Is that fair?
 12 MR. BYWATER: Major Reese?
 13 MAJOR REESE: Yeah, I would say -- I would say
 14 that's fair. We looked to a lot of -- a lot of things,
 15 but we just felt prudent to put some of the things that
 16 were already going on into this rule just to clarify
 17 that, you know, these regulations exist and that they
 18 need to be complied with.
 19 MS. KEOUGH: Okay. Thank you very much. I
 20 appreciate it. And that's all I have at this point in
 21 time.
 22 MR. BYWATER: Thank you. Appreciate you being
 23 here. I hope you can stick around for a little while.
 24 MS. KEOUGH: I brought my lunch, so I will.
 25 MR. BYWATER: All right. Let's move to

Page 15

1 District 2 now. Is there anyone appearing in District 2
 2 that would like to make a comment at this point in time?
 3 (No verbal response.)
 4 MR. BYWATER: I'm not seeing anyone yet.
 5 Let's go to District 4. Is there anyone appearing in
 6 District 4 that would be interested in making comments,
 7 asking questions, or undertaking discussion at this
 8 point in time?
 9 (No verbal response.)
 10 MR. BYWATER: I'm not seeing anyone in
 11 District 4 then.
 12 District 5, is there anyone appearing at this
 13 time that would like to make a comment?
 14 UNIDENTIFIED SPEAKER: Well, there's nobody
 15 here at this moment that would like to testify.
 16 MR. BYWATER: Thank you. I appreciate you
 17 keeping me posted on that.
 18 Okay. District 6?
 19 UNIDENTIFIED SPEAKER: There's no one here
 20 that would like to make a comment at this time.
 21 MR. BYWATER: Very good. Let's go back to the
 22 headquarters auditorium. Is there anyone in the
 23 auditorium at this point in time?
 24 Jeff, would you like to take the podium and
 25 make a comment for us? Could you identify yourself and

Page 16

1 let us know who you represent for the record. We
 2 know -- we know, but we need it on the record. And then
 3 tell us what areas you'd like to discuss.
 4 MR. MILES: Thank you, Mr. Bywater. My name
 5 is Jeff Miles. I'm the administrator for the Local
 6 Highway Technical Assistance Council. And so,
 7 Mr. Chairman, if you'd bear with me, I wouldn't mind
 8 touching on the five.
 9 MR. BYWATER: All right.
 10 MR. MILES: And I have questions. So, if I
 11 take a little time, I hope that's okay.
 12 MR. BYWATER: It's not a problem, no.
 13 MR. MILES: Mr. Chairman, before I get to the
 14 proposed rules, there is one comment that LHTAC would
 15 like to make, and I'm not sure exactly which rule it
 16 appears in, but in our review we'd like the department
 17 to consider legislation for the off-tracking rules.
 18 My understanding -- and I'm not a lawyer, I
 19 don't play one on TV -- is that rules apply to those
 20 Idaho state government organizations and how they
 21 exercise their powers. So, for a local jurisdiction to
 22 address off-tracking or over length the way ITD does
 23 makes it problematic. And it's LHTAC's goal to support
 24 the local jurisdiction, and I think that harmonization,
 25 even locally, works better for the local jurisdiction in

Page 17

1 their permitting processes in the future One Stop Shop
 2 and for the law enforcement agencies to understand
 3 enforcement.
 4 For local jurisdiction to address off-track
 5 length effectively, they would really have to somehow
 6 put in their permit off-tracking guidelines or address
 7 each route from an engineering standpoint that takes too
 8 much time on a permit-by-permit basis. So, there is a
 9 possibility that off-tracking as a statute would set a
 10 groundwork for easier permitting and promote future
 11 possibility of local control One Stop Shop for
 12 permitting. That's a possibility.
 13 MR. BYWATER: Thank you. Before you move on,
 14 let me just ask, is there any of the experts that would
 15 like to comment on that?
 16 (No verbal response.)
 17 MR. BYWATER: I think we basically have a
 18 request for ITD to consider legislation in that area or
 19 supporting other groups with legislation; is that
 20 correct?
 21 MR. MILES: A consideration for that, yes.
 22 MR. BYWATER: Yes.
 23 MR. FREW: I might just weigh in on that.
 24 MR. BYWATER: Alan.
 25 MR. FREW: I understand where Jeff is coming

Page 18

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. HOBDEY-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

Page 19

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

Page 20

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

Page 21

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

Page 22

1 the permit, that's a separate violation and a separate
 2 fine. So, yeah, absolutely, these can be enforced.
 3 MR. MILES: So, Mr. Chairman, Major Reese, if
 4 a certifier was no longer qualified but continued to
 5 certify, then the violation would be to the permit
 6 holder, or how does that work?
 7 MAJOR REESE: In that case, what we would do
 8 is, if they had somebody certifying to this standard, we
 9 would have to go in and visit them and then take some
 10 action against them. If they were certifying at an
 11 interstate level so that we've got drivers crossing
 12 state lines and we've got somebody certified that's not
 13 certified, I would also turn that over to FMCSA for some
 14 potential action on their level, as well. So, there
 15 could be some action taken against them from FMCSA if
 16 they're trying to certify interstate drivers and they're
 17 not qualified to do that.
 18 MR. MILES: So, at this point, Mr. Chairman,
 19 LHTAC supports these changes, although they're not
 20 additives, so I'm not sure they address the concerns
 21 voiced by the local jurisdictions for additional
 22 considerations for larger vehicles over 105.5.
 23 MR. BYWATER: Thank you.
 24 MR. MILES: So, with that, though, I guess my
 25 comment would follow in 39.03.23, which I'll get to, is

Page 23

1 that if it's not certified, then I think the permit
 2 should also be revoked as a reasoning in 39.03.23, and
 3 I'll get to that, so we can speak to it when we there.
 4 MR. BYWATER: Okay. So, before we move onto
 5 another rule, we will discuss Chapter 23. You do intend
 6 to deal with that directly then; is that correct?
 7 MR. MILES: Yeah.
 8 MR. BYWATER: Yeah. So, okay. I just wanted
 9 to give anyone else in the audience, in any of the
 10 districts, if they have any comments or followup to the
 11 questions you've asked regarding Rule 12, a chance --
 12 have you -- have you completed your comments to Rule 12?
 13 MR. MILES: I guess, Mr. Chairman, the only
 14 thing I'd add is that as part of the 129,000-pound
 15 vehicles, which is not a rule that's proposed for
 16 alteration at this time, LHTAC still believes if the
 17 operators are telling jurisdictions that they have
 18 antilock brakes, then maybe that's a standard that would
 19 make it comparable across the field. My concern is when
 20 you talk about brake systems, then if this brake law is
 21 already a part of federal law, we're not asking for
 22 anything as an enhancement for an enhanced vehicle.
 23 MR. BYWATER: Okay.
 24 MR. MILES: So, I go back to my comment for
 25 antilock brake systems that was in my original

Page 24

1 testimony.
 2 MR. BYWATER: Thank you. Now, before we move
 3 onto Rule 15, is there anyone in the audience here today
 4 that would like to respond or to followup on Jeff's
 5 comments regarding Rule 12?
 6 (No verbal response.)
 7 MR. BYWATER: Is there anyone in any of the
 8 districts that is interested in commenting or responding
 9 to Jeff's comments regarding Rule 12, Chapter 12?
 10 (No verbal response.)
 11 MR. BYWATER: Okay. I don't see anyone
 12 appearing so. Thank you, Jeff. Excuse the
 13 interruption.
 14 MR. MILES: Oh, no.
 15 MR. BYWATER: Let's move onto the next rule.
 16 MR. MILES: No problem. Sorry about me
 17 messing up my order there.
 18 MR. BYWATER: Oh, no.
 19 MR. MILES: At this point, Mr. Chairman, I'd
 20 like to talk about IDAPA 39.03.15. And reiterating what
 21 I said is that LHTAC promotes a One Stop Shop where
 22 decision-making could be -- for local roads are
 23 available to the local jurisdiction in a future setting,
 24 and harmonization and promotion of rule changes that
 25 will facilitate that is important to LHTAC.

Page 25

1 LHTAC does not believe the proposed wording is
 2 beneficial to local jurisdictions or properly fits
 3 within the current statute. And so as I understand
 4 it -- and I had some discussion earlier this week so I
 5 could get a better understanding with the ITD staff --
 6 it is an idea to allow the locals to include them, but
 7 they would have to opt out by saying they do not want
 8 it.
 9 One of the problems with anything that falls
 10 in rule when you are a local jurisdiction is local
 11 jurisdictions don't look to rule for their own
 12 lawmaking. Rule, as I understand it -- and I'm not a
 13 lawyer, don't play one on TV -- is that a rule does
 14 not -- if that law is not legislatively given to that
 15 local jurisdiction, that rule does not apply to them.
 16 Where that law gives ITD legislative powers, their rules
 17 control those.
 18 So, it becomes complicated, and I can tell you
 19 my experience would say that in a very large, if not
 20 most situations, a local jurisdiction would not look to
 21 rule for handling a permit on their own system. They
 22 would look to legislation. So, it becomes problematic,
 23 as I read it today.
 24 I do suggest, though, that there is -- there
 25 is positive interaction with the Idaho Transportation

Page 26

1 Department, at least one jurisdiction, where permitting
 2 is shared. And I think that works towards a One Stop
 3 Shop situation. And in an effort to promote this, I
 4 think the rule could be rewritten so that it states, by
 5 agreement, a local jurisdiction can adopt these rules.
 6 And that helps the local jurisdiction, because they
 7 would be ratifying an agreement through an ordinance or
 8 through a motion and a legally binding procedure which
 9 makes the rules that they're adopting part of that local
 10 code.
 11 And I think it's a much better method to go,
 12 and it would allow LHTAC to find ways to assist local
 13 jurisdictions in their permitting issues by those that
 14 would be beneficial to join the Idaho Transportation
 15 Department. It would make it possible, and it would
 16 make it clear in law. But, remember, I don't purport to
 17 be a lawyer, and -- but I find it problematic as
 18 written. I probably find that it would probably be
 19 thrown out, because it's not traceable to statute for
 20 the local jurisdiction, and it's not clear in the fact
 21 that they have to opt out or it's enforced.
 22 And so when you consider 289 jurisdictions in
 23 the State of Idaho, 200 or so of them are cities. Some
 24 of those cities have a half a man person. They probably
 25 would not be able to research, to some extent, how this

Page 27

1 rule would interact with them. And I think our goal is
 2 for compliance, and our goal is for a good process, not
 3 one that confuses.
 4 MR. BYWATER: Very good. Let me just ask the
 5 subject matter experts if there's anyone on the panel
 6 that would like to respond.
 7 I appreciate your comments and your
 8 suggestions. You really haven't asked a question. But
 9 is there anyone on the panel at this point in time that
 10 would like to respond? Alan?
 11 MR. FREW: Sure. Jeff, first off, thank you
 12 for being here today, and I appreciate the comments, and
 13 we greatly appreciate the dialogue that we had earlier
 14 this week and that is continuing. That's really the
 15 purpose, and that's where we'd like to be. We've
 16 enjoyed a very close working relationship with the local
 17 jurisdictions, and we want that to continue.
 18 So, we're certainly open to the dialogue and
 19 to your suggestions and your thoughts as we shape this
 20 going forward, and we will present your ideas, your
 21 thoughts, your concerns to the board for their
 22 consideration.
 23 MR. BYWATER: Thank you, Alan. Any response,
 24 Jeff? Or do you want to move onto the next rule?
 25 MR. MILES: I think I -- I think that covers

Page 28

1 for that what I have today.
 2 MR. BYWATER: All right. Before you do that,
 3 let me just ask if there's anyone else here in the
 4 headquarters auditorium that would like to comment or
 5 respond with regard to Jeff's comments on Rule 15 or
 6 Chapter 15 of the rules.
 7 Is there anyone in any of the districts that
 8 has appeared that would like to step to the podium in
 9 the district and make a comment or a response to Jeff's
 10 discussion of Rule 15?
 11 (No verbal response.)
 12 MR. BYWATER: I don't see anyone appearing, so
 13 let's move on then, Jeff. Thank you.
 14 MR. MILES: Mr. Chairman, in regards to IDAPA
 15 rule 39.03.23 --
 16 MR. BYWATER: 22 or 23?
 17 MR. MILES: Did I have it wrong? 23? Or is
 18 it 22? I, currently at this moment, don't have a
 19 comment on 22.
 20 MR. BYWATER: Thank you. Okay.
 21 MR. MILES: On 23 -- so, Mr. Chairman, with
 22 the testimony of -- I mean, the input from Major Reese,
 23 LHTAC would suggest that failure to have a valid owner
 24 safety inspection, where the qualification is expired or
 25 invalid or the certification is not present, would be

Page 29

1 grounds for termination of that permit for that power
 2 unit. As called out in section, I think it's 100-01,
 3 and I could be wrong --
 4 MR. BYWATER: Yes.
 5 MR. MILES: So, with that, Mr. Chairman, I
 6 think that those three items, as called out in the
 7 previous rule, owner safety inspection and certification
 8 being valid, the owner's inspector qualification being
 9 valid, since it's a self-certified, there has to be a
 10 higher onus in our mind, because you are asking industry
 11 to self-police. So, in every case, if they do not meet
 12 the standard, then the permit should be invalid, and
 13 that includes [unintelligible], although I think that
 14 Major Reese covered that that might be a law violation
 15 in another place, so...
 16 MR. BYWATER: Okay.
 17 MR. MILES: But we think those three reasons
 18 should be a reason to disqualify -- or whatever the word
 19 is here I'm looking for -- revocation of permit for
 20 noncompliance, because this is a serious issue.
 21 And when you talk about driver safety, when
 22 you talk about brake systems, where in your own reports
 23 it says 87 percent of the accidents are due to driver
 24 error, a competent driver and competent and
 25 well-maintained equipment is critical, because in our

Page 30

1 research it's not always so much the road that is the
 2 issue here, it's the undefined situation. It's the
 3 situation that's not covered by engineering fact. It's
 4 the accident that is the control and safety situations.
 5 And so those three, speaking to safety, it
 6 would be critical that they come with a heavy weight.
 7 Otherwise, why follow the law?
 8 MR. BYWATER: Okay. So, just before I hand
 9 this off to Major Reese, I just want to clarify. You
 10 are supporting the amended -- the one thing that was
 11 changed in the rule, but you're finding the rest of that
 12 section lacks these three areas, and you would encourage
 13 the department to add these three areas that you've
 14 pointed out as additional factors that could lead to the
 15 revocation of the permit; is that correct?
 16 MR. MILES: That's correct.
 17 MR. BYWATER: Okay. Major Reese, do you have
 18 a response?
 19 MAJOR REESE: Thanks for your comments.
 20 That's definitely -- I've made some notes here, and
 21 that's definitely something that we'll discuss. Thank
 22 you.
 23 MR. BYWATER: Great. Anything else, Jeff?
 24 MR. MILES: At this time, Mr. Chairman, I
 25 think I might step down and could consider making

Page 31

1 comments on rules not considered, because I understood
 2 it was an open discussion.
 3 MR. BYWATER: It is.
 4 MR. MILES: So, there are several rules that
 5 LHTAC would be much more interested in that weren't
 6 selected, and we'll either -- I'll either present that
 7 testimony for discussion. When someone else discusses
 8 it, I might come up, and or we will -- we will put that
 9 in a written response.
 10 MR. BYWATER: Okay. That would be great, and
 11 you're free to come back in and join into the comment
 12 line at any point in time. So, I appreciate your
 13 consideration in that regard.
 14 Let me just ask, is there anyone in the
 15 auditorium here at headquarters that would like to
 16 respond to Jeff's comments and suggestions regarding
 17 Chapter 23?
 18 (No verbal response.)
 19 MR. BYWATER: I'm seeing no hands raised. In
 20 the districts, those of you who are watching from the
 21 district offices, is there anyone that would like to
 22 make a comment or respond to Jeff's comments regarding
 23 Chapter 23?
 24 (No verbal response.)
 25 MR. BYWATER: Okay. Don't see anybody. Thank

Page 32

1 you, Jeff. Please feel free to join back in at any
 2 time, and we'll see how -- you are right. We want to
 3 have an open discussion. It's not just the rules we're
 4 talking about. We want to talk about the concepts that
 5 weren't advanced or rules that weren't changed, and so
 6 we are interested in hearing that. So, thank you.
 7 MR. MILES: Thank you.
 8 MR. BYWATER: Okay. Thank you, Jeff. Let's
 9 go back out to the districts now at this point in time
 10 and just see -- I don't have anyone else seated in the
 11 commenters' chairs here in the headquarters auditorium,
 12 but let me just ask one by one in the districts if we
 13 have anyone that's appearing that would like to step up
 14 and make a comment at this time.
 15 In District 1, is there anyone interested in
 16 making a comment at this point in time?
 17 UNIDENTIFIED SPEAKER: No, there isn't Steve.
 18 MR. BYWATER: Thank you very much. Appreciate
 19 it.
 20 District 2, is there anyone present there that
 21 would like to be heard with regards to some comments at
 22 this time?
 23 (No verbal response.)
 24 MR. BYWATER: I don't see anyone there.
 25 Let's go to District 4. Is there anyone in

Page 33

1 District 4 appearing that would like to make a comment
 2 at this time?
 3 UNIDENTIFIED SPEAKER: Nobody willing to make
 4 a comment at this time, sir.
 5 MR. BYWATER: Thank you very much.
 6 District 5, is there anyone that would like to
 7 make a comment at this time.
 8 UNIDENTIFIED SPEAKER: There's nobody here in
 9 District 5 that would like to make a comment at this
 10 time.
 11 MR. BYWATER: Thank you very much.
 12 District 6?
 13 UNIDENTIFIED SPEAKER: No one's here to make a
 14 comment now.
 15 MR. BYWATER: Thank you. Appreciate it. So,
 16 that brings us back to the headquarters auditorium. Is
 17 there anyone else that would like to step up to the
 18 podium at this time and make a comment?
 19 (No verbal response.)
 20 MR. BYWATER: Don't see any hands being
 21 raised. We're still early in the process. A lot of
 22 people are still on their lunch hour and so on. So,
 23 what I think I'd like to do is take a brief break. I
 24 can't really see the clock because of the glare, but I'm
 25 assuming it's 10 or 12 minutes before 1:00.

Page 34

1 Okay. Let's take a break until 1:00. We will
 2 adjourn until then and reconvene again seeking comments.
 3 Thank you. Thank you all for your interest and
 4 patience.
 5 (A break was taken.)
 6 MR. BYWATER: I apologize. The break went a
 7 little bit longer than I said. I'd try to keep it to
 8 the announced time, but I appreciate those of you that
 9 are still in attendance.
 10 For those of you who may have just joined us,
 11 let me give you a brief introduction to what we're
 12 doing. We want to welcome you to the Idaho
 13 Transportation Department's Negotiated Rulemaking
 14 Meeting regarding the proposed amendments to five of the
 15 department's IDAPA rules governing the permitting
 16 process and safety requirements for loads that are
 17 required to operate under an overlegal permit.
 18 My name is Steve Bywater, and I am the
 19 moderator for today's meeting. We're in the process of
 20 receiving comments and answering questions, conducting
 21 discussions on the proposed changes to the five rules.
 22 We have participants from around the state and here at
 23 ITD headquarters. We thank you for your interest and
 24 participation.
 25 Just to briefly review the five rules under

Page 35

1 discussion here today for possible amendment are IDAPA
 2 Section 39, or Title 39, Section 3, Chapter 6, which
 3 deals with the allowable length and overhang; Chapter
 4 12, which deals with inspections and brake requirements;
 5 Chapter 15, which deals with the 129,000-pound
 6 harmonization on interstates and with truck permitting;
 7 Chapter 22, which deals with brake requirements and
 8 driver training; and Chapter 23, which deals with the
 9 revocation of permits due to an out-of-service order by
 10 the FMCSA.
 11 We've had some good comments and discussions
 12 so far. I want you to remind you that the language of
 13 the specific proposals can be found by visiting the
 14 rulemaking page on the ITD home page by clicking the
 15 rulemaking tab on the right labeled "Commercial Truck
 16 Permit Rulemaking."
 17 Following this meeting and after the close of
 18 the comment period on July 8th, the department will
 19 review the comments received and the negotiations held
 20 and make a determination of what, if any, changes should
 21 be made to the five proposed rule changes before they
 22 are presented to the board again for further
 23 consideration.
 24 At this point in time, I'm going to ask
 25 District 1 -- we did have one commenter from District 1.

Page 36

1 Is there anyone else present at this time that would
 2 like to make any comments regarding these rules or the
 3 concepts that came up from the initial round of
 4 negotiated rulemaking?
 5 UNIDENTIFIED SPEAKER: No, there is not.
 6 MR. BYWATER: Thank you, sir.
 7 Let's go to District 2. Is there anyone in
 8 District 2 that would like to make some comments at this
 9 time?
 10 UNIDENTIFIED SPEAKER: No, just a couple from
 11 the district staff.
 12 MR. BYWATER: Thank you, sir. Appreciate you
 13 letting me know.
 14 District 4, is there anyone present at this
 15 time that's interested in making a comment?
 16 UNIDENTIFIED SPEAKER: No one interested in
 17 making a comment at this time.
 18 MR. BYWATER: Thank you.
 19 District 5?
 20 UNIDENTIFIED SPEAKER: No one's here to make
 21 any comments at this time.
 22 MR. BYWATER: Very good. Thank you.
 23 District 6?
 24 UNIDENTIFIED SPEAKER: No one is here to
 25 comment.

Page 37

1 MR. BYWATER: Thank you. Okay. We do have
 2 some people in the auditorium at headquarters. Is there
 3 anyone here now that would like to make a comment at
 4 this time regarding the rules or the concepts, the
 5 things that were adopted or that were not adopted?
 6 MS. LYON: Hi.
 7 MR. BYWATER: Thank you for being here. And
 8 could you please state your name and who you represent.
 9 MS. LYON: Absolutely. My name is McKensey
 10 Lyon. I am with the Right Truck for Idaho Coalition,
 11 and while we will be submitting a formal written
 12 document before the 8th, I just wanted to bring it into
 13 the conversation that we do find some ambiguity in the
 14 out-of-service language, and I know that there are
 15 conversations happening currently, but I'm making sure
 16 that that language truly reflects the intent of ITD and
 17 clarifies for carriers and drivers that exact language,
 18 so we're working to identify exactly where we think
 19 changes should be made, and we'll get those over to you
 20 in writing. We just wanted to let you know that that
 21 was our intent in this process so far.
 22 MR. BYWATER: Thank you, McKensey. Let's just
 23 clarify so that we make sure I'm understanding. This
 24 relates to Chapter 23, the one amendment to that --
 25 proposed amendment to that rule which talks about

Page 38

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

Page 39

1 Idaho-based carrier, and maybe the most I've seen is
 2 maybe two or three on a bad year, which is pretty rare,
 3 so it doesn't happen very often, so... And that's the
 4 ones we're talking about, and we do plan on clarifying
 5 that.
 6 MS. LYON: Excellent. Well, and we will, as I
 7 said, put our thoughts into writing and submit those
 8 before the deadline.
 9 MR. BYWATER: Excellent. Thank you.
 10 MS. LYON: Thank you.
 11 MR. BYWATER: Appreciate it.
 12 MS. LYON: Of course.
 13 MR. BYWATER: While we have a chance, is there
 14 anyone out in any of the districts or any of the other
 15 panel members that would like to speak to McKensey's
 16 comments regarding Chapter 23?
 17 (No verbal response.)
 18 MR. BYWATER: I don't see anyone stepping
 19 forward in any of the districts. Very good. Well,
 20 that's -- that's a good example of how negotiated
 21 rulemaking should work. The language is there, and the
 22 people that are drafting it are looking at it from one
 23 direction, and then we get some comments from folks who
 24 look at it from another direction and point out the
 25 language that can be and needs to be clarified, so I

Page 40

1 appreciate that process being undertaken.
 2 Is there anyone else here in the auditorium at
 3 this time that would like to make a comment?
 4 (No verbal response.)
 5 MR. BYWATER: We have -- we have a lot of time
 6 scheduled for this meeting, and I -- Alan?
 7 MR. FREW: Steve, if we could, I don't -- I
 8 don't know if Shawn is still available in District 1.
 9 MR. BYWATER: District 1. Let's just ask.
 10 Would you have something you'd like to bring up?
 11 MR. FREW: Yes, I would like to clarify just a
 12 little bit.
 13 MR. BYWATER: Shawn Keough, are you still
 14 available in District 1? Alan Frew indicated that he
 15 has something he'd like to comment on.
 16 MS. KEOUGH: Hey.
 17 MR. BYWATER: Great.
 18 MS. KEOUGH: Hello, Alan.
 19 MR. BYWATER: Hi, Shawn. Thank you for coming
 20 forward. Alan just indicated that he had something he'd
 21 like to bring up. So, Shawn or Alan, go ahead.
 22 MR. FREW: So, Shawn, yeah, this is Alan down
 23 here in less beautiful Boise. Very beautiful up where
 24 you're at. And I'm sorry we're not all there together.
 25 But you made a comment earlier about -- or asked a

Page 41

1 question about whether or not in Rule 12, 39.03.12, if
 2 those additions were additive. And you asked that
 3 question of Major Reese, and Major Reese responded that
 4 they were not.
 5 What we're trying to do with this -- with this
 6 rulemaking, Shawn, is underscore the fact for our permit
 7 holders that their -- that they also fall under the
 8 motor carrier rules promulgated by the Idaho State
 9 Police. So, we're going back and forth, and we're
 10 sharing ideas, resources, and citations back and forth
 11 on these rules.
 12 While they're not -- they don't provide an
 13 additional administrative or enforcement burden to these
 14 motor carriers, what we're trying to do is underscore
 15 the fact that many of the vehicles operating under an
 16 overlegal permit or a special permit would still have to
 17 follow many of the same motor carrier rules that are
 18 promulgated by the Idaho State Police, particularly in
 19 those inspection requirements, the requirements around
 20 brakes and so forth.
 21 So, did you have any other questions or
 22 concerns about those rules as we've proposed them?
 23 MS. KEOUGH: Well, thank you, Alan, for that
 24 question. And on behalf of Associated Logging
 25 Contractors, again, Jerry Deckard is the lead contact on

Page 42

1 that, and he's not available today.
 2 The ALC lined up several things in their
 3 original comments into this process that they were
 4 hoping to have addressed in regards to safety, which was
 5 also what the governor's focus was, and it appears, at
 6 least at this point today, that all that's really been
 7 addressed of those issues is basically -- and please
 8 correct me if I've missed something, but basically it's
 9 status quo that what we're doing today is fine and
 10 there's no room for improvement.
 11 And none of the issues -- or I don't think any
 12 of the issues, really, that Associated Logging
 13 Contractors brought up -- there were 11 different ones
 14 that were not only driver safety-related but road
 15 safety-related that appeared to be -- I think the
 16 message I'm hearing is: Everything's just fine.
 17 And so I think therein is the concern that the
 18 Associated Logging Contractors will have and will
 19 probably likely detail more in their comments by
 20 July 8th.
 21 MR. BYWATER: Okay. Thank you, Shawn.
 22 MR. FREW: Thank you, Shawn.
 23 MR. BYWATER: Alan?
 24 MR. FREW: So, as part of this, though, one of
 25 the things that we did that is additive is the piece

Page 43

1 that Major Reese indicated that they would be adopting.
 2 I think it was part 380. And I would turn that over to
 3 Major Reese to kind of -- to elaborate a little more of
 4 what that does.
 5 MAJOR REESE: Yeah, let me clarify that. Part
 6 380 addresses training for long combination vehicle
 7 drivers, and it's something that the interstate carriers
 8 have had to comply with and the companies of other
 9 conversations have been complying with, and we've never
 10 adopted it for intrastate transportation, and it
 11 clearly -- more clearly defines what the carriers have
 12 to do as far as training their drivers to operate those
 13 longer double and triple combination vehicles. So, that
 14 is one change that we are going to be making this year,
 15 and we're going to bring that rule into be adopted with
 16 some other normal changes that we need to do, term-order
 17 carrier rules, this year.
 18 So, that's one thing with your question
 19 earlier that I didn't clarify that I should have, is
 20 that that change is happening. That is the one change
 21 that's happening. The other things that we reference in
 22 here are things that we've already adopted.
 23 The other thing that I guess I should mention
 24 when it comes to enhancing some of these regulations,
 25 one of the problems that we have is if we -- if we try

Page 44

1 to make a rule that is more stringent than the federal
 2 rule, we have a potential preemption issue with the
 3 federal regulations, and the states have a pretty high
 4 standard to meet.
 5 If we want to make something more stringent
 6 than it is in the federal regulations at the state
 7 level, we have to be able to show that that -- that
 8 that's in the best interest of safety and that it
 9 doesn't severely impact the carriers, so that's
 10 something that we have to be careful of, is that we
 11 don't start interfering with that federal preemption
 12 standard, as well, when we start looking at changing
 13 some of those things.
 14 MR. BYWATER: Shawn, any followup to that?
 15 MS. KEOUGH: Not at this time.
 16 MR. BYWATER: Thank you.
 17 MR. FREW: So, could I just followup maybe --
 18 MR. BYWATER: Alan?
 19 MR. FREW: -- with Shawn and ask, was there
 20 something that we missed -- that you think we missed
 21 that is of concern to the ALC?
 22 MS. KEOUGH: I, again, will be conferring with
 23 our key point person, Jerry Deckard, and our president,
 24 Steve Sherich, and our ALC board, and submit those
 25 comments by July 8th.

Page 45

1 MR. FREW: Okay.
 2 MR. BYWATER: Very good. Thanks, Shawn.
 3 MS. KEOUGH: And I do want to acknowledge,
 4 again, an appreciation on the part of the ALC for this
 5 effort. We do appreciate that. Thank you.
 6 MR. BYWATER: Thank you. Okay. While we're
 7 at District 1, I'll just ask the monitor there in the
 8 room, is there anyone else in the room at this point in
 9 time that would like to make a comment?
 10 UNIDENTIFIED SPEAKER: Just Shawn and I.
 11 That's it.
 12 MR. BYWATER: Okay. Thank you, sir.
 13 Let's go to District 2. Is there anyone in
 14 District 2 that would like to make a comment?
 15 UNIDENTIFIED SPEAKER: No comments at this
 16 time.
 17 MR. BYWATER: Thank you. Appreciate you being
 18 there for us.
 19 District 4, is there anyone present there that
 20 has arrived now that would like to make a comment?
 21 UNIDENTIFIED SPEAKER: We have one in
 22 attendance, but he does not wish to make a comment.
 23 MR. BYWATER: Very good. Thank you.
 24 Appreciate that.
 25 And District 5, anyone in attendance that

<p style="text-align: right;">Page 46</p> <p>1 would like to make a comment? 2 UNIDENTIFIED SPEAKER: We have no comments at 3 this time. 4 MR. BYWATER: Is there anyone in attendance 5 besides you? 6 UNIDENTIFIED SPEAKER: No one is -- no one's 7 here except for me. 8 MR. BYWATER: Okay. Thank you. 9 So, let's go now to District 6. 10 UNIDENTIFIED SPEAKER: No one here except me. 11 MR. BYWATER: Okay. Thank you. Very good. 12 Back to the headquarters auditorium. Is there 13 anyone that has arrived now that's interested in making 14 a comment at this point in time? 15 (No verbal response.) 16 MR. BYWATER: All right. I don't see any 17 hands going up, so I think rather than just have a bunch 18 of dead air, I think I'm going to call for another 19 break, ten-minute break, at this point in time, and then 20 we'll see if we have any more commenters that have 21 arrived. 22 So, thank you for being with us. We will 23 re-adjourn in ten minutes. 24 (A break was taken.) 25 MR. BYWATER: Let's get started. Is there</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. BYWATER: Thank you very much. I 2 appreciate that. 3 District 5? 4 UNIDENTIFIED SPEAKER: No. There is nobody 5 here that would like to comment. 6 MR. BYWATER: Is there anyone in attendance 7 observing? 8 UNIDENTIFIED SPEAKER: No, there is not. 9 MR. BYWATER: Thank you very much. 10 District 6? 11 UNIDENTIFIED SPEAKER: No one is here except 12 me. 13 MR. BYWATER: Thank you. Thank you for being 14 there. Okay. And I have polled the audience here at 15 headquarters. We have several people in attendance but 16 no one who is desirous of making comments at this time. 17 I do apologize to those of you who are here, but what I 18 think I'd like to do at this point in time is take an 19 extended break. 20 I'm going to ask each of you in the districts 21 if someone comes into your office that is desirous of 22 making a comment, if you'll -- first of all, if you 23 could just please advise them that we're on a break, we 24 have no one waiting to make a comment so we're taking a 25 break.</p>
<p style="text-align: right;">Page 47</p> <p>1 anyone in the auditorium here at this point in time here 2 at headquarters that would like to make comments at this 3 point in time? 4 (No verbal response.) 5 MR. BYWATER: Okay. Okay. We're back on the 6 record. Those of you that have -- for those of you that 7 have just joined us, I remind you that we are 8 undertaking a negotiated rulemaking process with the 9 Idaho Transportation Department for suggested amendments 10 to five of the department's IDAPA rules. 11 I'm not aware of whether or not there is 12 anyone in any of the districts at this point in time 13 that have arrived that would like to make comments. Let 14 me go through the districts one by one and check. 15 District 1, is there anyone new there? Anyone 16 interested in commenting at this point in time? 17 UNIDENTIFIED SPEAKER: No, there is not. 18 MR. BYWATER: Thank you. 19 District 2? 20 UNIDENTIFIED SPEAKER: No, sir. No one from 21 the public has arrived. 22 MR. BYWATER: Thank you very much. 23 District 4? 24 UNIDENTIFIED SPEAKER: Our one attendee has 25 departed, so no one else is here at this time.</p>	<p style="text-align: right;">Page 49</p> <p>1 And then, secondly, if you could let me know, 2 just step to the podium and let us know that you have 3 someone there now that is interested in making a 4 comment, we'll wait until we hear from you, or if we 5 have someone here in headquarters, someone new that 6 comes in that's interested in commenting, we will call 7 the meeting back to order. But until then, just please 8 standby, stand down. Okay. Thank you all. 9 (A break was taken.) 10 MR. BYWATER: We're live. Okay. Let's get 11 started again. We've been on an extended break waiting 12 for any other interested persons who would like to come 13 in and comment. We do have some folks here now at ITD 14 headquarters who have expressed an interest in making 15 more comments, so I'd like to get going again. 16 Let me just make sure that we're coming 17 through to all the districts. If I can get the 18 district -- the department representatives that are in 19 the hearing rooms or the meeting rooms in each of the 20 districts to just step up to the podium and give me a 21 thumbs up if you are hearing us. 22 Okay. I don't see anybody in District 1 or 23 District 6. Thank you. The other districts. District 24 1, can you hear me? 25 (No verbal response.)</p>

Page 50

1 MR. BYWATER: District 6, is there anyone
 2 present in that meeting room?
 3 (No verbal response.)
 4 MR. BYWATER: I am a little bit concerned,
 5 because I know Shawn Keough was at -- was attending at
 6 District 1 and planned to still be in attendance at this
 7 point in time, and I wanted to be sure she was able to
 8 hear the comments that are made. Michelle is not --
 9 UNIDENTIFIED SPEAKER: I'll e-mail Scotty.
 10 MR. BYWATER: Would you -- I just want to make
 11 contact with someone in District 1 and make sure that --
 12 okay. Let's get started then.
 13 This is just a reminder that we're having a
 14 negotiated rulemaking session regarding the proposed
 15 amendments to five of the department rules governing the
 16 permitting process and safety requirements for loads
 17 that are required to operate using an overlegal permit.
 18 At this point in time, I understand that
 19 Stuart Davis from the Idaho Association of Highway
 20 Districts -- Stuart's present, and he would like to make
 21 some comments. Thank you, Stuart. Step up to the
 22 podium, if you would, and if there's a particular rule
 23 you want to talk about, let us know so we can put it up
 24 on the screen, and -- a rule or rules.
 25 MR. DAVIS: Thank you, Mr. Bywater. The

Page 51

1 specific rule that I will be chatting about is 39.03.15.12
 2 which I believe is the scope in -- forgive me. I rarely
 3 delve into rules, and so --
 4 MR. BYWATER: I understand.
 5 MR. DAVIS: -- my knowledge is statutory
 6 authority, and so this is very new to me, so...
 7 MR. BYWATER: Very good.
 8 MR. DAVIS: My name is Stuart Davis, and I am
 9 the executive director of the Idaho Association of
 10 Highway Districts. I have been working for the
 11 association for 25 years. Our association represents
 12 12,000-plus miles of highway in the State of Idaho.
 13 Most people are surprised to learn that over
 14 80 percent of the population of this state resides in a
 15 highway district, and growing up in Idaho Falls I had no
 16 idea what a highway district was until I came to Boise
 17 in 1986 on my way to law school, which is a different
 18 story that never happened.
 19 I'd like to preface my remarks, Mr. Bywater,
 20 and community members, by saying how incredibly
 21 appreciative I am for this opportunity to work with you
 22 on these rules. ITD staff, specifically Mundo and Ramon
 23 and Molly and Alan, have been absolutely wonderful to
 24 work for and with on this, and Scott Stokes has bent
 25 over backwards to make sure that every accommodation has

Page 52

1 been made. And I think that this -- the way you've done
 2 this videoconferencing and things like that is
 3 indicative of your goal to have as much input before you
 4 make these rules as possible, and so I commend the staff
 5 for this. They have done an excellent job.
 6 Unfortunately, I'm going to have to ask your
 7 support in removing this 02 rule. I believe, along with
 8 the City's and the County's Association and our legal
 9 team, that ITD lacks the statutory authority to permit
 10 truck traffic on the local system. I recognize that
 11 this is an attempt by Mr. Frew, and I'm very, very
 12 grateful for him to come up with a One Stop Shop sort of
 13 mechanism. However, it is my wish, and that of the
 14 city's and county's, is to do this either statutorily or
 15 a combination of statutory changes, rules and
 16 regulations, and/or memorandums of understanding or
 17 joint power agreements.
 18 This is a huge amount of information to cover.
 19 It's a huge deviation from current policy, and we would
 20 feel much better if we were able to participate in this
 21 process on the statutory level. My association and that
 22 of the city's and county's stands ready and willing to
 23 take the ball and run with it and work on legislation
 24 that takes care of your needs and ours and would be
 25 willing to sponsor said legislation at the next session.

Page 53

1 I firmly believe that we can come up with
 2 conciliatory ideas and language that we could put into a
 3 statute. The statute process, I believe, is much more
 4 open, although I have commented on how open you've made
 5 this process, but the vast majority of my constituents
 6 don't understand the rule process, don't have access to
 7 the rules, don't understand the rules, and,
 8 unfortunately, until we started down this path two
 9 months ago, their executive director had no idea about
 10 how the rule process worked.
 11 Statutory process gives us -- at least for
 12 hearings, statutory process allows clearly a common
 13 ground in which we can all work together on, and I would
 14 feel much more comfortable if that were the way to go.
 15 I further would ask you as ITD works on this
 16 process and also on redoing the trucking handbook that
 17 the locals be included in that trucking handbook. It's
 18 clear to me that that document that this department
 19 produces is a beautiful document, and it's read by the
 20 truckers, and it would be wonderful if we could express
 21 some of our concerns and opinions inside that trucking
 22 manual.
 23 Again, we would love to collaborate on this
 24 work in concert with ITD to put this into a statute.
 25 And I do want to say one last comment, Mr. Bywater, is I

Page 54

1 have a letter here I have submitted to -- I believe to
 2 Mundo and to Ramon via e-mail signed by the cities,
 3 counties, and highway districts, and we specifically
 4 allude to the various sections in here in which we
 5 oppose.
 6 So, in closing, thank you for this
 7 opportunity. I really -- I'm overwhelmed at how all of
 8 us have come together on this, even the cities and the
 9 counties and the highway districts. We frequently have
 10 the same goals, but we have come together with this
 11 department. We met with Alan and some of the other
 12 people the other day, and we've made some common ground,
 13 and it's working. And the transparency of this
 14 process -- I hate political buzz words, but
 15 transparency, I think, has been the overriding concern,
 16 and you guys have gone a marvelous job at making it
 17 transparent.
 18 So, my name is Stuart Davis. I'd like to
 19 conclude my remarks by saying thank you. And if you
 20 have any questions, I would love to try to answer them.
 21 I also have with me my associate director,
 22 Laura Lantz. Laura has worked for me for about six
 23 years and has done a wonderful job of learning about
 24 this process and helping me.
 25 MR. BYWATER: Thank you, Stuart.

Page 55

1 MR. DAVIS: Thank you.
 2 MR. BYWATER: Before you step down, let me
 3 just ask Alan if you have a response to Stuart.
 4 MR. FREW: I do have a response, and it -- we
 5 are also appreciative of the dialogue that we've had
 6 together and the open and frank discussion that we've
 7 had on this issue, and that was -- that was really the
 8 purpose. This was for us, both, kind of a voyage of
 9 discovery a little bit, so -- and thank you for your
 10 patience with us, and we're looking forward to
 11 continuing the discussion. So, that's -- I think it's a
 12 good place where we both want to be.
 13 MR. BYWATER: Thank you.
 14 MR. DAVIS: Thank you, Mr. Bywater. Thank
 15 you, Mr. Frew.
 16 MR. BYWATER: Is there anyone else in the
 17 auditorium here at headquarters that would like to
 18 respond to Stuart's comments or --
 19 (No verbal response.)
 20 MR. BYWATER: I don't see any hands raised.
 21 Let me just ask around the districts. Is there anyone
 22 attending in any of the districts, having heard Stuart's
 23 comments, that would like to discuss them further or
 24 comment on them?
 25 (No verbal response.)

Page 56

1 MR. BYWATER: I don't see anyone stepping
 2 forward. So, thank you, Stuart.
 3 MR. DAVIS: Thank you.
 4 MR. BYWATER: Appreciate it.
 5 MR. DAVIS: Thank you for the opportunity.
 6 MR. BYWATER: Jeff Miles, I understand that
 7 you do have -- you had indicated in your earlier
 8 testimony that perhaps you might be willing to discuss
 9 some concerns you had regarding concepts that did not go
 10 forward or other suggestions, so I'll turn the time over
 11 to you.
 12 MR. MILES: Thank you, Mr. Bywater. Under
 13 probably concept 3 was the limitations about the
 14 consideration of the concept proposed by LHTAC of ABS
 15 brakes for vehicles heavier than 105.5 to 129,000.
 16 MR. BYWATER: Let's make sure -- I just want
 17 to make sure that we're all looking at the same thing.
 18 So, if we're talking about concept 3, I have it's titled
 19 "Equipment/Overlegal Loads." Is that the one that
 20 you're talking about?
 21 MR. MILES: Yeah. And it might also be
 22 mentioned in 5, but I don't know. Maybe Mundo knows
 23 where it might be better. But I think it talks in 3
 24 about ABS brake systems under "Analysis."
 25 MR. BYWATER: Okay.

Page 57

1 MR. MILES: So, my comments to this section,
 2 Mr. Bywater, is that LHTAC commented that in --
 3 especially with local jurisdictions, local jurisdictions
 4 are understanding that trucking is the backbone of a
 5 rural state like Idaho.
 6 When you take a vehicle from 105 or let's say
 7 80,000 pounds on the state to 129,000, you're increasing
 8 the weight more than 50 percent. That increases the
 9 energy. And if you look at your own studies, 79 percent
 10 of the accidents are from driver error.
 11 This vehicle is an enhancement, an enhanced
 12 vehicle, that the trucking community is asking to use.
 13 Anytime you're allowing a vehicle that's larger or
 14 different, I believe that the community should step up.
 15 Many of the presentations by the organizations that use
 16 these vehicles state that they have put better systems
 17 on these trucks, including antilock brake systems.
 18 In discussing this with some of the community,
 19 they're aware that these systems improve braking from 30
 20 to 70 percent. And, actually, in case of an emergency,
 21 that could be critical considering the amount of energy
 22 you're adding to any sort of nonstandard interaction
 23 crash, something not predicted by engineering.
 24 So, LHTAC would like to restate the request
 25 for consideration of ABS braking on vehicles over 105.5,

Page 58

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

Page 59

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 real 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

Page 60

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 --

Page 61

1 MR. FREW: Can I interject?
 2 MR. BYWATER: Alan, you bet.
 3 MR. FREW: I think -- I think that, Bill, we
 4 also had a discussion -- you might want to elaborate
 5 just a list more. We also had a discussion where you're
 6 mixing -- it could be that the power unit is
 7 manufactured in a year and the trailer is manufactured
 8 in a different year, and sometimes you have a mixture of
 9 ABS, non-ABS requirements. What happens then?
 10 MAJOR REESE: Well, that is a safety concern,
 11 and it is allowed. And one of the problems -- an
 12 example, the best example I could give you would be,
 13 you've got a power unit, a track here that is equipped
 14 with ABS and you have a trailer that's not. Well, that
 15 tractor will stop more efficiently than the trailer.
 16 And one of the concerns we have, and we've actually seen
 17 this happen in crashes, is that there's a potential for
 18 that trailer, in emergency braking, to swing out into
 19 the other lane.
 20 And so there is a danger, and that's -- that's
 21 one of the concerns with not having ABS on all of the --
 22 all of the equipment, is if you start mixing it like
 23 that, it does cause some potential problems like that.
 24 MR. MILES: So, as a followup, if we -- if
 25 Idaho were to require that both -- that, say, that

Page 62

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

Page 63

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

Page 64

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

Page 65

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

<p style="text-align: right;">Page 66</p> <p>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</p>	<p style="text-align: right;">Page 68</p> <p>1 something that we can take into consideration. The only 2 other option is I'm colorblind, so they all look the 3 same to me. 4 MR. MILES: So, we don't give you a permit, 5 right? 6 MR. BYWATER: You now know the source of the 7 problem. 8 MR. FREW: So, Steve, if I might comment just 9 a little bit further. 10 MR. BYWATER: Sure, Alan. 11 MR. FREW: A moment ago Jeff mentioned how 12 he'd like the locals involved -- or, no, it was Stuart. 13 MR. BYWATER: Stuart. 14 MR. FREW: Stuart mentioned that he'd like the 15 locals involved as we further develop the trucker's 16 handbook. So, maybe we -- in that spirit, maybe we can 17 involve the locals as we look at our maps and look at 18 those colors and try to improve those maps and include 19 our partners with LHTAC in local jurisdictions. 20 MR. MILES: I appreciate that. I think that 21 would be a good step. I know the association has talked 22 about wanting to be involved, and I think when we're all 23 involved, we end up with a better state. 24 MR. BYWATER: Yeah. 25 MR. MILES: Thank you.</p>
<p style="text-align: right;">Page 67</p> <p>1 explain, and I'm probably not even bringing forth the 2 concept well enough. But in staff analysis, the color 3 maps with the colors meaning different things based on 4 the map makes it a difficult discussion. 5 MR. BYWATER: I think that's pretty clear. 6 Let's hear what comments we have. Alan, would you like 7 to respond to that? 8 MR. FREW: I'd like Mundo to respond to that. 9 MR. BYWATER: Mundo, would you like to respond 10 to that? 11 MR. RODRIGUEZ: Yes, I'd respond to that. 12 Jeff, I'm not going to -- I'm not going to say no to 13 what you just said, because you're right. There are 14 some colors that are used multiple times for different 15 maps. What we've tried to do is we've tried to make 16 sure that, depending on the type of load that you're 17 utilizing it for, whether it be reduced or nonreducible, 18 that we didn't overlap the colors in each one. And I 19 know that doesn't make a lot of sense to people who 20 don't know what our maps look like. 21 But we will take into consideration of trying 22 to update those colors or at least try to simplify it. 23 In order to do so, those colors are designated in our 24 administrative rules, so we would have to make an 25 administrative rule change to that, but that is</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. BYWATER: Thanks, Jeff. Is there anyone 2 in the audience here at headquarters that would like to 3 followup or respond to the comments regarding that 4 particular concept? 5 (No verbal response.) 6 MR. BYWATER: Is there anyone in the districts 7 that's listening in that would like to respond to the 8 comments regarding that concept? 9 (No verbal response.) 10 MR. BYWATER: Okay. I see -- I don't see 11 anyone interested, so let's move on, Jeff. 12 MR. MILES: Also covered within the concept 5 13 is LHTAC commented that the minute presentations by 14 entities asking for overlegal permits, those over a 15 105.5 to 129 proposed and demonstrated vehicles that had 16 ten axles. 17 If you -- my experience is to be translated to 18 this situation. When I write contracts, you're writing 19 to the lowest common denominator. In other words, 20 you're writing to -- not to people who are the best, to 21 who are moving forward with taking industry. Your 22 contracts are written for keeping the rest of the group 23 on the same level playing field. 24 You can actually get a 129,000-pound vehicle 25 without ten axles. And so the comment that it's always</p>

Page 70

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

Page 71

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.

Page 72

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

Page 73

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,

<p style="text-align: right;">Page 74</p> <p>1 plus or minus. And -- but -- so every inspector is 2 different. They have -- every inspector has their 3 discretion at which point to write a citation. But the 4 7 percent that you're referring to, I believe, is at 5 that point where it would be required to offload on the 6 spot. 7 That means, for that carrier, they have to 8 bring another vehicle alongside. If this is potatoes, 9 they shovel potatoes from one vehicle over to the other 10 one. Grain, one vehicle over to the other one. They 11 have to offload the excess on the spot, and it has to be 12 done safely and cleanly without creating a littering 13 kind of situation. 14 So -- and I'm not sure if I'm missing 15 something with your comment. 16 MR. MILES: Mr. Bywater -- 17 MR. BYWATER: Jeff. 18 MR. MILES: -- I appreciate that. That helps 19 me out a little bit, because in reading the permit, I 20 wouldn't have read that into it. So, if it's being 21 enforced that it's closely accurate of the scales, I 22 think that's a big understanding on my part that makes 23 it more palatable. 24 I still would say to myself, as if I was 25 writing rules and stuff, is 7 percent even for</p>	<p style="text-align: right;">Page 76</p> <p>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 5 thank the panel and the Idaho Transportation Department 6 for this opportunity. I think this is a great way to 7 move rulemaking and permitting forward, and we look for 8 ITD to be a great partner to LHTAC. So, thank you very 9 much. 10 MR. BYWATER: Thank you for your participation 11 and your cogent comments. Well thought out. Thank you. 12 Okay. Anyone else present now in the 13 quarters, auditorium, meeting room that would like to 14 make a comment at this time? 15 (No verbal response.) 16 MR. BYWATER: Is there anyone present in any 17 of the districts that has comments since we've started 18 that hasn't had a chance to make a comment that would 19 like to? 20 (No verbal response.) 21 MR. BYWATER: Could I have the monitors in 22 each of the rooms to step forward to the camera and just 23 give me a thumbs up if you're ready for us to go on 24 another extended break. 25 Okay. I don't see anybody in District 1 or</p>
<p style="text-align: right;">Page 75</p> <p>1 offloading enough of a deterrent when you're having -- 2 129 is one thing. There are 144,000-pound trucks that 3 may be proposed. So, I would ask the department that 4 maybe there is a percentage where there is a weight 5 where you say, "or 5,000 pounds," because that's a huge 6 amount of volume, 7 -- 9,000 pounds. 7 UNIDENTIFIED SPEAKER: Yeah. That isn't in 8 the administrative rule either, if I might also 9 interject. That's in Idaho's statute. 10 MR. MILES: The 7 percent? 11 UNIDENTIFIED SPEAKER: Yes, sir. 12 MR. MILES: So, that's a reflection that -- 13 the permit rule that I was reading is a reflection of 14 statute? 15 UNIDENTIFIED SPEAKER: That's correct. 16 MR. MILES: Okay. 17 MR. BYWATER: Okay. Anybody else on the panel 18 that would like to comment? 19 (No verbal response.) 20 MR. BYWATER: Okay. Anyone else in the 21 audience that would like to comment on this concept? 22 (No verbal response.) 23 MR. BYWATER: Anyone in any of the district 24 meeting rooms that, having heard these comments, would 25 like to reply?</p>	<p style="text-align: right;">Page 77</p> <p>1 District 6. Otherwise, thank you, folks. 2 MR. RINDLISBACHER: Mr. Bywater, before we 3 break, could I address the audience? 4 MR. BYWATER: You bet. 5 MR. RINDLISBACHER: In the spirit of LHTAC's 6 comments about rules and some concepts that weren't 7 advanced forward and made into rules, I'd like to 8 address concept number 6, roadway characteristics, if I 9 might. 10 You'll note there were several different 11 comments from folks during our comment period that they 12 would have liked to have seen us address roadway 13 characteristics in the rules, and the department has not 14 done that, and I think an explanation of why we didn't 15 carry those forward might be helpful for folks to 16 understand, so if I could -- 17 MR. BYWATER: I think that would be great. In 18 fact, I know there are more than one individual in the 19 audience still here today that made comments in that 20 regard, so I think it would be a good time to bring it 21 up. 22 MR. RINDLISBACHER: Okay. I'll run through 23 those fairly quickly, and if we want to get into further 24 discussion after my remarks, that would be welcomed, as 25 well, but...</p>

Page 78

1 MR. BYWATER: Okay. Sounds good.
 2 MR. RINDLISBACHER: I guess I would start by
 3 saying with the 129,000-pound request, the
 4 Transportation Board has given the department staff some
 5 direction on things that we ought to consider prior to
 6 presenting back to them a recommendation or findings.
 7 And there are several things that are of note that
 8 overlap this roadway characteristics piece.
 9 For example, one of the things that we do
 10 prior to recommending a route be approved for
 11 129,000 pounds would be an analysis of the bridges along
 12 that route to make sure that those bridges were capable
 13 of supporting that load and structural integrity of the
 14 bridge would not be compromised. In addition to that,
 15 the board has asked that we look at travel time
 16 concerns.
 17 If these vehicles are going to be traveling on
 18 the route, are there times of the day or days of the
 19 week when it wouldn't be appropriate for those?
 20 Certainly, one of those considerations is during
 21 inclement weather, and the permitting process does not
 22 allow for those oversized loads to travel when -- during
 23 inclement weather, during a blizzard or those kinds of
 24 things. So, that alleviates some of those concerns.
 25 Now, there was an issue -- the board also

Page 79

1 would have us look at spring breakup limits, and the
 2 roadway might be frozen, or it's in that thaw period
 3 when it might be weak and soft, and so the department
 4 already has the ability to reduce weight, size, and
 5 speed of vehicles, though there's no reason for a rule
 6 for that, because the department -- the board already
 7 has the ability to regulate that.
 8 There was a question about chain-up and
 9 chain-down areas. That also is already within the
 10 purview of the department to do that, and those -- there
 11 are folks that would recognize that we already have
 12 chain-up, chain-down areas in some locations, and we
 13 actually have some mandatory chain-up, chain-down
 14 requirements on several of our routes when we have a
 15 history of having problems with vehicles losing traction
 16 and skidding out. So, that -- the board has already
 17 asked the department to consider that.
 18 Another concern would be the compatibility of
 19 runaway truck ramps. We have runaway truck ramps in
 20 locations where we know we have issues with potential
 21 runaway truck ramps already. And so that's a discussion
 22 point that we would bring before the Transportation
 23 Board prior to approving additional loads like
 24 129,000 pounds on routes. We typically put those
 25 runaway truck ramps on long grades that are steep where

Page 80

1 vehicles can -- if they lose their brakes would increase
 2 in speed, and so we provide an opportunity for those
 3 vehicles to exit the roadway in a safe manner.
 4 Another question that we addressed with the
 5 Transportation Board is pavement conditions. We do a
 6 comparative analysis between current legal loads and a
 7 proposed load to make sure there's not additional stress
 8 on the pavements.
 9 Safety concern is a general topic, but within
 10 that general topic, there are a lot of things that the
 11 department considers prior to issuing 129,000 pounds for
 12 approving that request. For example, the speed limit of
 13 the road, the daily traffic volumes, the volume of
 14 commercial trucks, roadway geometrics, the horizontal
 15 vertical curves, are we going uphill, are we going
 16 downhill, are vehicles cuing behind existing trucks as
 17 they're traveling those grades? That's something that
 18 staff looks at. Other obvious conflict points like
 19 numbers of approaches or accident locations that should
 20 be considered, certainly the number of lanes that
 21 already exist.
 22 One of the requests was for passing lanes.
 23 Again, passing lanes, we have methodology, and we have
 24 rationale for when we would put a passing lane in and
 25 when we wouldn't, and we're currently doing that. We

Page 81

1 install passing lanes in instances where we have safety
 2 concerns with people, large volumes of traffic cuing up
 3 behind a slower moving vehicle, and the other vehicles
 4 either run into the back of those slower vehicles or
 5 pass when they shouldn't be passing.
 6 Sight distance is another concern. Certainly
 7 when we design new roadways we consider sight distance,
 8 but we also monitor sight distance on existing roads,
 9 and where we see it have sight distance problems or
 10 concerns, we address that with striping of the roadway.
 11 You're all familiar with the "No Passing" barriers.
 12 We'll put up "No Passing" signs. We'll put up "Sharp
 13 Curve Ahead" and advise of things that would be in
 14 advance of a concern. So, we can address that with
 15 signing and striping.
 16 The other thing that the board has asked us to
 17 look at is, in our current program, prior to permitting
 18 129,000-pound routes, what projects do we currently have
 19 programs for bridges and pavements, and what projects
 20 would we anticipate might be needed to be programmed?
 21 And so those are all considerations that we consider in
 22 our current practice.
 23 And so the -- I wanted to give a short
 24 explanation of why there isn't an administrative rule
 25 just for roadway characteristics. The short answer to

Page 82

1 that is we already have existing processes to deal with
 2 those concerns that were brought forward, and we feel
 3 like those processes are adequately dealing with those
 4 issues and concerns. But I'd be happy to entertain
 5 discussion or comment on any of those if folks would
 6 like to visit that.
 7 MR. BYWATER: Thank you, Blake. Is there
 8 anyone in the audience that would like to respond to
 9 Blake's comments regarding the concepts in number 6,
 10 concept number 6?
 11 (No verbal response.)
 12 MR. BYWATER: Is there anyone attending in the
 13 district that would like to respond to Blake's comments
 14 at this point in time?
 15 (No verbal response.)
 16 MR. BYWATER: Okay. I don't see anyone out
 17 there at this point in time. Appreciate that, Blake. I
 18 think we may have a chance to come back to that later
 19 on --
 20 MR. RINDLISBACHER: Okay.
 21 MR. BYWATER: -- as we get more commenters
 22 going. But at this point in time, unless there's anyone
 23 here now that I haven't noticed coming in that would
 24 like to comment at this time, we're going to take
 25 another extended break.

Page 83

1 I will leave it to the monitors in the
 2 districts to let me know if someone has come into those
 3 meeting rooms that would like to make a comment, and
 4 then we'll just kind of watch the headquarters
 5 auditorium to see if anyone else comes in here. So, we
 6 will take a break now until we have more commenters.
 7 Thank you.
 8 (A break was taken.)
 9 MR. BYWATER: Those of you who are out in the
 10 districts, this feed is going to shut off at exactly
 11 7:30, so I just wanted to thank you for your patience
 12 and support, your good attitudes.
 13 Anyone that's in a room in a district at this
 14 point in time -- I see a gentleman in District 1. If
 15 you could just come stand at the podium and check in
 16 with us or check out with us. It looks like everybody's
 17 there except for District 6. I think they might have
 18 given up on us.
 19 But, folks, thank you very much. Obviously,
 20 we were planning on a lot more commenters than we had,
 21 but you never know, so we appreciate your willingness to
 22 help and especially your good attitudes in doing it.
 23 So, we're going to shut down the feed now and
 24 close the hearing. We have a couple of folks that have
 25 stayed with us in the auditorium just to make sure that

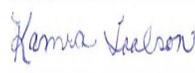
Page 84

1 there weren't any new commenters. We appreciate their
 2 attendance.
 3 But thank you all, and the folks here from
 4 headquarters will be in touch with you as to where
 5 everything goes from here. Thank you.
 6 UNIDENTIFIED SPEAKER: Thanks districts. We
 7 really appreciate it.
 8 (The hearing was concluded.)
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Page 85

1 REPORTER'S CERTIFICATE

2
 3 I, KAMRA TOALSON, CSR No. 756, Certified
 4 Shorthand Reporter, certify:
 5 That the audio recording of the proceedings were
 6 transcribed by me or under my direction.
 7 That the foregoing is a true and correct
 8 transcription of all testimony given, to the best of my
 9 ability.
 10 I further certify that I am not a relative or
 11 employee of any attorney or party, nor am I financially
 12 interested in the action.
 13 In witness whereof, I set my hand and seal this
 14 6th day of July 2016.
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KAMRA TOALSON, CSR NO. 756
 Notary Public
 Post Office Box 2636
 Boise, Idaho 83701-2636

My commission expires May 23, 2018

	41:2	13:24;26:5,7	answered (1) 10:3
§	additive (5) 12:21,25;14:7;41:2;42:25	agreements (1) 52:17	anticipate (1) 81:20
\$400 (1) 21:23	additives (1) 22:20	agricultural (1) 13:14	antilock (3) 23:18,25;57:17
[address (14) 5:12;16:22;17:4,6;22:20; 63:14,15;64:11;73:12;77:3,8, 12;81:10,14	ahead (2) 40:21;81:13	apologize (3) 20:3;34:6;48:17
[unintelligible] (1) 29:13	addressed (4) 42:4,7;64:14;80:4	air (1) 46:18	appeared (2) 28:8;42:15
A	addresses (1) 43:6	Alan (21) 4:22;13:21;17:24;27:10,23; 38:14;40:6,14,18,20,21,22; 41:23;42:23;44:18;51:23; 54:11;55:3;61:2;67:6;68:10	appearing (12) 4:11,19;5:7;10:6,7;15:1,5,12; 24:12;28:12;32:13;33:1
ability (4) 11:15;79:4,7;85:9	addressing (2) 9:15;11:23	ALC (6) 11:12,21;42:2;44:21,24;45:4	appears (2) 16:16;42:5
able (5) 26:25;44:7;50:7;52:20;70:18	adds (2) 20:8;64:5	alleviates (1) 78:24	applies (2) 13:8;72:23
ABS (15) 56:14,24;57:25;58:14,17,20, 24;59:16,20;60:19;61:9,14,21; 62:1,11	adequately (1) 82:3	allow (4) 25:6;26:12;72:7;78:22	apply (2) 16:19;25:15
absolutely (4) 21:19;22:2;37:9;51:23	adjourn (1) 34:2	allowable (4) 3:14;7:4,15;35:3	Appreciate (31) 9:18;11:22;12:5,13;14:20,22; 15:16;27:7,12,13;31:12;32:18; 33:15;34:8;36:12;38:11;39:11; 40:1;45:5,17,24;48:2;56:4; 59:25;68:20;71:19;74:18; 82:17;83:21;84:1,7
accept (1) 60:13	Administration (2) 38:2,8	allowed (4) 18:16,19;60:4;61:11	appreciation (1) 45:4
access (2) 7:3;53:6	Administrative (6) 3:13;41:13;67:24,25;75:8; 81:24	allowing (2) 7:19;57:13	appreciative (2) 51:21;55:5
accident (2) 30:4;80:19	administrator (4) 4:23,25;16:5;21:13	allows (3) 53:12;72:2,24	approaches (1) 80:19
accidents (2) 29:23;57:10	admit (1) 62:21	allude (1) 54:4	appropriate (3) 9:11;12:14;78:19
accommodate (1) 18:22	adopt (8) 21:1,8,21;26:5;63:25;64:8; 65:12,18	almost (1) 9:9	approved (2) 3:2;78:10
accommodation (1) 51:25	adopted (12) 13:2;18:19;20:23,25;21:4; 37:5,5;43:10,15,22;64:7;65:14	along (2) 52:7;78:11	approving (2) 79:23;80:12
accurate (2) 73:23;74:21	adopting (2) 26:9;43:1	alongside (1) 74:8	approximately (2) 3:3;9:8
acknowledge (1) 45:3	adoption (1) 64:15	alteration (1) 23:16	area (2) 17:18;64:9
across (2) 9:4;23:19	advance (1) 81:14	although (4) 22:19;29:13;53:4;64:15	areas (8) 2:16;3:3;6:12;16:3;30:12,13; 79:9,12
Act (3) 7:18;11:23;18:15	advanced (3) 7:11;32:5;77:7	always (5) 30:1;60:2;69:25;70:1;71:22	around (8) 4:12;5:7;10:7,18;14:23; 34:22;41:19;55:21
action (4) 22:10,14,15;85:12	advise (2) 48:23;81:13	ambiguity (1) 37:13	arrived (5) 45:20;46:13,21;47:13,21
actual (1) 65:17	Affairs (2) 5:4,22	amended (2) 19:2;30:10	arrives (1) 5:10
actually (5) 57:20;59:11;61:16;69:24; 79:13	afternoon (1) 2:1	amendment (5) 3:12,22;35:1;37:24,25	articulate (1) 63:24
add (7) 13:18,21;14:10;19:4;23:14; 30:13;64:4	again (14) 4:3,6;5:20;34:2;35:22;41:25; 44:22;45:4;49:11,15;53:23; 59:5;62:20;80:23	amendments (7) 3:4,6,9;4:6;34:14;47:9;50:15	assist (1) 26:12
adding (1) 57:22	against (3) 22:10,15;62:3	among (2) 4:18;5:7	Assistance (2) 16:6;66:17
addition (1) 78:14	age (4) 63:18;64:20,24;65:15	amount (7) 9:10;52:18;57:21;72:15,25; 73:7;75:6	associate (1) 54:21
additional (7) 7:20;22:21;30:14;41:13; 63:16;79:23;80:7	agencies (1) 17:2	Analysis (4) 56:24;67:2;78:11;80:6	Associated (6) 11:5,18,18;41:24;42:12,18
additionally (2) 8:4,24	ago (4) 53:9;68:11;71:23;72:16	analyzing (1) 6:5	Association (7)
additions (1)	agreement (3)	and/or (3) 7:20;12:18;52:16	
		announced (1) 34:8	

50:19;51:9,11,11;52:8,21; 68:21 assuming (1) 33:25 assumption (1) 14:8 attempt (3) 4:16;19:22;52:11 attendance (8) 34:9;45:22,25;46:4;48:6,15; 50:6;84:2 attendee (1) 47:24 attending (4) 50:5;55:22;60:21;82:12 attention (1) 8:1 attitudes (2) 83:12,22 attorney (2) 62:5;85:11 audience (11) 10:10;23:9;24:3;48:14; 60:17;69:2;71:6;75:21;77:3,19; 82:8 audio (1) 85:5 auditorium (16) 10:21;15:22,23;28:4;31:15; 32:11;33:16;37:2;40:2;46:12; 47:1;55:17;65:25;76:13;83:5, 25 authority (3) 7:4;51:6;52:9 auto (1) 18:17 available (7) 7:5,7;19:16;24:23;40:8,14; 42:1 avenue (2) 21:15;60:14 avenues (1) 21:20 awaiting (1) 12:4 aware (4) 47:11;57:19;60:2;72:10 axles (5) 69:16,25;70:3,14;72:13	ball (1) 52:23 bar (1) 63:9 barriers (1) 81:11 based (1) 67:3 basically (5) 7:19;17:17;18:8;42:7,8 basis (2) 17:8;19:8 bat (1) 6:18 bear (1) 16:7 beautiful (3) 40:23,23;53:19 becomes (3) 25:18,22;72:15 began (1) 6:5 begin (2) 9:19;64:22 behalf (3) 11:5;41:24;65:4 behind (3) 9:23;80:16;81:3 believes (1) 23:16 beneficial (3) 19:20;25:2;26:14 bent (1) 51:24 besides (1) 46:5 best (6) 12:7;44:8;60:11;61:12; 69:20;85:8 bet (2) 61:2;77:4 better (10) 16:25;25:5;26:11;52:20; 56:23;57:16;60:6;68:23;70:1,7 beyond (2) 70:5;72:6 big (1) 74:22 bigger (1) 62:9 Bill (3) 7:17;18:19;61:3 binding (1) 26:8 bit (8) 5:24;34:7;40:12;50:4;55:9; 63:9;68:9;74:19 Blake (3) 4:24;82:7,17 Blake's (2) 82:9,13 blanket (1) 72:14	blizzard (1) 78:23 blue (1) 3:24 Board (29) 2:16,17;3:1,2,2,7;4:6;5:16; 7:8,9,10;8:25;9:2,14;18:4; 27:21;35:22;44:24;63:2;65:6; 71:18;78:4,15,25;79:6,16,23; 80:5;81:16 boat (1) 18:17 boats (1) 7:20 Boise (3) 40:23;51:16;85:22 book (1) 58:16 both (4) 55:8,12;58:18;61:25 Box (1) 85:21 brake (13) 3:15,18;7:22;8:8;23:20,20, 25;29:22;35:4,7;56:24;57:17; 58:20 brakes (13) 6:11,16;8:17;23:18;41:20; 56:15;58:10,12,14,18;59:16; 60:19;80:1 braking (3) 57:19,25;61:18 break (17) 33:23;34:1,5,6;46:19,19,24; 48:19,23,25;49:9,11;76:24; 77:3;82:25;83:6,8 breakup (1) 79:1 Bridge (2) 70:6;78:14 bridges (3) 78:11,12;81:19 brief (3) 5:14;33:23;34:11 briefly (2) 7:13;34:25 bring (10) 8:1;37:12;40:10,21;43:15; 66:22;74:8;76:3;77:20;79:22 bringing (1) 67:1 brings (1) 33:16 broad (1) 13:10 brought (5) 14:24;42:13;62:1;63:1;82:2 built (1) 58:25 bump (1) 62:2 bunch (1) 46:17	burden (1) 41:13 buzz (1) 54:14 BYWATER (185) 2:1,7;7:9;9:18;11:9;12:1,15, 22;13:20;14:3,12,22,25;15:4, 10,16,21;16:4,9,12;17:13,17, 22,24;18:6,12;19:3,6,10,13,25; 20:4,7,13,18;21:11;22:23;23:4, 8,23;24:2,7,11,15,18;27:4,23; 28:2,12,16,20;29:4,16;30:8,17, 23;31:3,10,19,25;32:8,18,24; 33:5,11,15,20;34:6,18;36:6,12, 18,22;37:1,7,22;38:4,11;39:9, 11,13,18;40:5,9,13,17,19; 42:21,23;44:14,16,18;45:2,6, 12,17,23;46:4,8,11,16,25;47:5, 18,22;48:1,6,9,13;49:10;50:1,4, 10,25;51:4,7,19;53:25;54:25; 55:2,13,14,16,20;56:1,4,6,12, 16,25;57:2,58:5;59:9,24;60:16, 21,24;61:2;62:16,22;63:12; 64:10;65:2,8,20,23;66:3,7,10; 67:5,9;68:6,10,13,24;69:1,6,10, 70:10;71:2,5,8,11,14,20;73:10; 74:16,17;75:17,20,23;76:2,4, 10,16,21;77:2,4,17;78:1;82:7, 12,16,21;83:9
C			
B			
back (20) 13:20;14:3;15:21;23:24; 31:11;32:1,9;33:16;41:9,10; 46:12;47:5;49:7;58:13,25;59:5; 72:18;78:6;81:4;82:18 backbone (1) 57:4 backwards (1) 51:25 bad (1) 39:2		call (2) 46:18;49:6 called (2) 29:2,6 came (3) 6:6;36:3;51:16 camera (2) 9:21;76:22 can (45) 3:22;9:10,23;10:2,3;14:23; 18:14,21,25;20:16,18;21:23; 22:2;23:3;25:18;26:5;35:13; 38:23;39:25;49:17,24;50:23; 53:1,13;61:1;62:9,22;63:14,15, 15,21,23;64:6,20,23;65:18; 68:1,16;69:24;70:14,21;71:1; 73:20;80:1;81:14 capability (2) 70:19;73:22 capable (1) 78:12 CapitolWest (1) 11:7 care (1) 52:24 careful (1) 44:10 carried (1) 63:10 Carrier (15) 5:2;8:5;13:3,10;21:21,22;	

<p>38:1,8;39:1;41:8,17;43:17; 58:12;65:13;74:7</p> <p>carriers (9) 13:4;21:2;37:17;38:6,25; 41:14;43:7,11;44:9</p> <p>carry (1) 77:15</p> <p>cars (2) 73:8,9</p> <p>case (3) 22:7;29:11;57:20</p> <p>categories (1) 6:7</p> <p>causation (1) 62:13</p> <p>cause (1) 61:23</p> <p>CDL (1) 65:1</p> <p>certainly (5) 18:3;27:18;78:20;80:20;81:6</p> <p>CERTIFICATE (1) 85:1</p> <p>certification (2) 28:25;29:7</p> <p>certified (4) 22:12,13;23:1;85:3</p> <p>certifier (1) 22:4</p> <p>certify (5) 22:5,16;73:13;85:4,10</p> <p>certifying (2) 22:8,10</p> <p>CFR (3) 8:3;20:20;65:7</p> <p>chain-down (3) 79:9,12,13</p> <p>chain-up (3) 79:8,12,13</p> <p>Chairman (13) 16:7,13;18:9;19:11;21:10; 22:3,18;23:13;24:19;28:14,21; 29:5;30:24</p> <p>chairs (3) 9:22;10:20;32:11</p> <p>chance (4) 23:11;39:13;76:18;82:18</p> <p>change (20) 9:5,5,12;11:15;12:5;13:11; 18:11,16;19:9;43:14,20,20; 64:20,22;65:14;67:25;70:12, 22;71:16,16</p> <p>changed (4) 30:11;32:5;64:17;65:17</p> <p>changes (14) 2:4,9;3:8;4:5;5:17;22:19; 24:24;34:21;35:20,21;37:19; 43:16;52:15;71:22</p> <p>changing (2) 38:16;44:12</p> <p>Chapter (20) 3:12,14,15,17,18;7:21;8:2; 20:1;23:5;24:9;28:6;31:17,23;</p>	<p>35:2,3,5,7,8;37:24;39:16</p> <p>characteristics (5) 6:23;77:8,13;78:8;81:25</p> <p>chatting (1) 51:1</p> <p>check (3) 47:14;83:15,16</p> <p>choose (1) 66:22</p> <p>chose (1) 9:14</p> <p>circular (1) 19:22</p> <p>citation (3) 38:9;73:20;74:3</p> <p>citations (1) 41:10</p> <p>cities (4) 26:23,24;54:2,8</p> <p>City's (3) 52:8,14,22</p> <p>clarification (1) 4:15</p> <p>clarified (1) 39:25</p> <p>clarifies (2) 13:12;37:17</p> <p>clarify (11) 13:7,16;14:1,16;20:16,18; 30:9;37:23;40:11;43:5,19</p> <p>clarifying (2) 13:2;39:4</p> <p>cleanly (1) 74:12</p> <p>clear (4) 26:16,20;53:18;67:5</p> <p>clearly (4) 13:12;43:11,11;53:12</p> <p>clicking (2) 3:24;35:14</p> <p>clock (1) 33:24</p> <p>close (5) 4:1;27:16;35:17;58:17;83:24</p> <p>closed (1) 6:5</p> <p>closely (1) 74:21</p> <p>closing (1) 54:6</p> <p>Coalition (1) 37:10</p> <p>Code (9) 3:13;13:9,18;18:10;19:1; 26:10;65:1,17;71:1</p> <p>cogent (1) 76:11</p> <p>collaborate (1) 53:23</p> <p>collected (1) 66:13</p> <p>collection (1) 7:3</p>	<p>color (2) 66:24;67:2</p> <p>colorblind (1) 68:2</p> <p>color-coded (1) 66:18</p> <p>colors (7) 66:21;67:3,14,18,22,23; 68:18</p> <p>combination (8) 20:10;21:7;43:6,13;52:15; 64:3;70:16;72:15</p> <p>comfortable (1) 53:14</p> <p>coming (4) 17:25;40:19;49:16;82:23</p> <p>commander (1) 4:21</p> <p>commence (1) 10:24</p> <p>commend (1) 52:4</p> <p>comment (70) 4:2;5:6;6:1,4;9:24;10:12,14, 23;15:2,13,20,25;16:14;17:15; 18:5;22:25;23:24;28:4,9,19; 31:11,22;32:14,16;33:1,4,7,9, 14,18;35:18;36:15,17,25;37:3; 40:3,15,25;45:9,14,20,22;46:1, 14;48:5,22,24;49:4,13;53:25; 55:24;60:15,22;62:19;66:15; 68:8;69:25;70:2;71:9,12;73:12; 74:15;75:18,21;76:14,18; 77:11;82:5,24;83:3</p> <p>commented (3) 53:4;57:2;69:13</p> <p>commenter (3) 10:5,20;35:25</p> <p>commenters (13) 4:15,17,18;6:17;9:23,25; 10:6;46:20;64:16;82:21;83:6, 20;84:1</p> <p>commenters' (1) 32:11</p> <p>commenting (3) 24:8;47:16;49:6</p> <p>comments (71) 2:9,23;4:3,10;5:15;6:5,9; 9:20,22;10:1,8;11:20;12:4,5; 13:22;15:6;23:10,12;24:5,9; 27:7,12;28:5;30:19;31:1,16,22; 32:21;34:2,20;35:11,19;36:2,8, 21;39:16,23;42:3,19;44:25; 45:15;46:2;47:2,13;48:16; 49:15;50:8,21;55:18,23;57:1; 59:13,25;60:1,13,18;66:8,15; 67:6;69:3,8;70:10;71:2;75:24; 76:11,17;77:6,11,19;82:9,13</p> <p>Commercial (3) 3:25;35:15;80:14</p> <p>commission (1) 85:24</p> <p>common (3)</p>	<p>53:12;54:12;69:19</p> <p>communication (1) 12:6</p> <p>community (7) 51:20;57:12,14,18;58:1;60:8; 70:8</p> <p>companies (2) 38:19;43:8</p> <p>company (1) 38:22</p> <p>comparable (1) 23:19</p> <p>comparative (1) 80:6</p> <p>compatibility (1) 79:18</p> <p>competent (2) 29:24,24</p> <p>competitive (1) 72:11</p> <p>completed (1) 23:12</p> <p>completely (1) 18:23</p> <p>compliance (1) 27:2</p> <p>complicated (1) 25:18</p> <p>complied (2) 14:18;21:17</p> <p>comply (3) 21:3,18;43:8</p> <p>complying (2) 21:20;43:9</p> <p>compromised (1) 78:14</p> <p>concept (33) 5:12;7:7,15,22;8:14,15,18,18, 22;56:13,14,18;62:17,24,25,25; 63:6,11;65:4,21;66:1,12;67:2; 69:4,8,12;71:12,20,21,24; 75:21;77:8;82:10</p> <p>concepts (21) 2:23,25;3:3,5;5:15;6:7,13; 7:6,10,11;9:3;11:1;32:4;36:3; 37:4;56:9;66:14;72:21,22;77:6; 82:9</p> <p>concern (10) 18:1;23:19;42:17;44:21; 54:15;61:10;79:18;80:9;81:6, 14</p> <p>concerned (1) 50:4</p> <p>concerns (15) 11:24;12:2;22:20;27:21; 41:22;53:21;56:9;61:16,21; 78:16,24;81:2,10;82:2,4</p> <p>concert (1) 53:24</p> <p>conciliatory (1) 53:2</p> <p>conclude (1) 54:19</p>
--	---	--	--

concluded (1) 84:8	21:20;36:10;83:24	deals (15) 3:13,15,16,17,19;7:15,21; 8:12,16,20;35:3,4,5,7,8	9:1,8;42:13;51:17;57:14; 61:8;67:3,14;74:2;77:10
condition (1) 8:8	6:11;21:24;39:12	decade (1) 38:24	difficult (4) 59:7;66:18,25;67:4
conditions (1) 80:5	6:12;52:18	December (1) 7:18	direct (2) 12:3,11
conducting (1) 34:20	covered (5) 3:3;5:23;29:14;30:3;69:12	decide (1) 9:11	direction (4) 39:23,24;78:5;85:6
conferring (1) 44:22	covers (1) 27:25	decision-making (2) 19:15;24:22	directly (1) 23:6
conflict (1) 80:18	crash (2) 57:23;62:12	Deckard (3) 11:7;41:25;44:23	director (3) 51:9;53:9;54:21
confuses (1) 27:3	crashes (2) 38:20;61:17	deemed (1) 38:7	discovered (1) 13:7
confusion (1) 38:15	creating (1) 74:12	defines (1) 43:11	discovery (1) 55:9
connected (1) 6:14	critical (3) 29:25;30:6;57:21	definitely (2) 30:20,21	discretion (1) 74:3
consider (11) 16:17;17:18;26:22;30:25; 59:15;65:6;70:9;78:5;79:17; 81:7,21	crossing (1) 22:11	delve (1) 51:3	discuss (10) 6:14;7:14;8:10;11:1;16:3; 23:5;30:21;55:23;56:8;58:8
consideration (15) 4:7;17:21;18:4;27:22;31:13; 35:23;56:14;57:25;65:3;66:14, 23;67:21;68:1;70:9;71:17	CSR (2) 85:3,19	demonstrated (2) 58:3;69:15	discussed (2) 13:24;38:14
considerations (3) 22:22;78:20;81:21	cuing (2) 80:16;81:2	denominator (1) 69:19	discusses (1) 31:7
considered (2) 31:1;80:20	current (8) 19:21;25:3;52:19;63:19; 66:23;80:6;81:17,22	departed (1) 47:25	discussing (2) 5:18;57:18
considering (1) 57:21	currently (8) 13:9;14:10;28:18;37:15; 59:18;63:19;80:25;81:18	Department (30) 2:14;3:23;4:3,13,14,24;5:1,3, 5;16:16;19:18;26:1,15;30:13; 35:18;47:9;49:18;50:15;53:18; 54:11;66:13;75:3;76:5;77:13; 78:4;79:3,6,10,17;80:11	discussion (20) 3:11;10:2,9,24;15:7;25:4; 28:10;31:2,7;32:3;35:1;38:13; 55:6,11;61:4,5;67:4;77:24; 79:21;82:5
considers (1) 80:11	Curve (1) 81:13	Department's (8) 2:2;3:6;4:12;13:22;34:13,15; 47:10;64:11	discussions (7) 4:4,16;5:16;10:2,4;34:21; 35:11
constituents (1) 53:5	curves (1) 80:15	depending (1) 67:16	disqualify (1) 29:18
contact (3) 11:6;41:25;50:11	customer (1) 2:21	design (1) 81:7	distance (4) 81:6,7,8,9
continue (2) 20:4;27:17	cycle (1) 10:18	designated (1) 67:23	district (57) 4:12;10:22;11:2;15:1,1,5,6, 11,12,18;28:9;31:21;32:15,20, 25;33:1,6,9,12;35:25,25;36:7,8, 11,14,19,23;40:8,9,14;45:7,13, 14,19,25;46:9;47:15,19,23; 48:3,10;49:18,22,23,23;50:1,6, 11;51:15,16;75:23;76:25;77:1; 82:13;83:13,14,17
continued (1) 22:4	D	determiner (1) 75:1	districts (32) 10:7,11,16,18;23:10;24:8; 28:7;31:20;32:9,12;39:14,19; 47:12,14;48:20;49:17,20,23; 50:20;51:10;54:3,9;55:21,22; 60:22;66:4;69:6;71:12;76:17; 83:2,10;84:6
continuing (2) 27:14;55:11	daily (1) 80:13	determination (2) 4:4;35:20	division (2) 4:25;5:21
Contractors (6) 11:6,18,19;41:25;42:13,18	danger (1) 61:20	deterrent (1) 75:1	document (3) 37:12;53:18,19
contracts (3) 69:18,22;71:22	data (1) 7:3	develop (1) 68:15	documentation (1) 6:3
control (3) 17:11;25:17;30:4	Davis (10) 50:19,25;51:5,8,8;54:18; 55:1,14;56:3,5	developed (1) 5:15	done (8) 12:6;52:1,5;54:23;64:20,21;
conversation (1) 37:13	day (3) 54:12;78:18;85:14	development (3) 3:4;5:17;7:8	
conversations (2) 37:15;43:9	daylight (1) 4:10	deviation (2) 52:19;70:4	
correctly (2) 65:10,10	days (1) 78:18	dialogue (3) 27:13,18;55:5	
Council (1) 16:6	dead (1) 46:18	differences (1) 12:20	
counties (2) 54:3,9	deadline (2) 11:20;39:8	different (10)	
County's (3) 52:8,14,22	deal (3) 9:2;23:6;82:1		
couple (3)	dealing (1) 82:3		

<p>74:12;77:14 double (1) 43:13 down (6) 30:25;40:22;49:8;53:8;55:2; 83:23 downhill (1) 80:16 draft (3) 3:8;7:12,14 drafting (1) 39:22 drive (2) 64:6;72:16 driver (17) 2:18;3:18;6:22;7:25;8:17,19; 21:6;29:21,23,24;35:8;38:10; 42:14;57:10;62:25;63:16;66:1 drivers (8) 22:11,16;37:17;43:7,12;63:5, 16;64:2 driver's (2) 64:24;65:15 due (6) 3:19;8:21;11:11;29:23;35:9; 70:18 during (6) 2:23;8:25;77:11;78:20,22,23</p>	<p>emphasis (1) 2:16 employee (1) 85:11 encourage (1) 30:12 end (2) 21:25;68:23 ends (1) 4:2 energy (2) 57:9,21 enforced (4) 21:5;22:2;26:21;74:21 enforcement (11) 6:19,20,20;7:2,23;8:23;17:2, 3;21:15;41:13;73:13 engineering (4) 4:25;17:7;30:3;57:23 enhanced (2) 23:22;57:11 enhancement (2) 23:22;57:11 enhancing (1) 43:24 enjoyed (1) 27:16 enough (2) 67:2;75:1 entertain (1) 82:4 entities (2) 58:2;69:14 entry (1) 73:20 equal (1) 73:7 equation (1) 11:13 equipment (19) 2:19;6:11,16,21;7:24;8:18; 29:25;58:3,14,15,19,23;59:2, 19;60:8,10,12;61:22;62:11 Equipment/Overlegal (1) 56:19 equipped (1) 61:13 error (2) 29:24;57:10 especially (5) 21:3;57:3;60:7;65:5;83:22 essentially (1) 6:7 even (7) 16:25;54:8;59:1;60:3;63:6; 67:1;74:25 everybody (1) 19:23 everybody's (1) 83:16 everyone (1) 5:20 Everything's (1)</p>	<p>42:16 exact (1) 37:17 exactly (4) 16:15;18:25;37:18;83:10 example (5) 39:20;61:12,12;78:9;80:12 exceed (1) 70:16 exceeds (1) 73:22 Excellent (3) 39:6,9;52:5 except (5) 46:7,10;48:11;60:4;83:17 exception (1) 21:6 excess (2) 72:15;74:11 excuse (4) 13:18;19:25;20:2;24:12 executive (2) 51:9;53:9 exemption (3) 13:6,8,14 exemptions (4) 13:8,10,25;14:2 exercise (1) 16:21 exist (3) 13:9;14:17;80:21 existing (4) 6:25;80:16;81:8;82:1 exit (1) 80:3 experience (3) 25:19;63:17;69:17 expert (2) 10:3;66:25 experts (6) 4:14,17,19;17:14;27:5;66:8 expired (1) 28:24 expires (1) 85:24 explain (2) 63:7;67:1 explanation (3) 63:10;77:14;81:24 express (1) 53:20 expressed (1) 49:14 extended (4) 48:19;49:11;76:24;82:25 extension (1) 70:5 extent (3) 26:25;63:6;64:14 extra (2) 13:17;73:8</p>	<p style="text-align: center;">F</p> <p>facilitate (2) 4:16;24:25 fact (5) 26:20;30:3;41:6,15;77:18 factors (1) 30:14 failure (1) 28:23 fair (2) 14:11,14 fairly (2) 66:13;77:23 fall (2) 41:7;62:13 falls (2) 25:9;51:15 familiar (1) 81:11 far (5) 13:16;35:12;37:21;43:12; 64:23 FAST (2) 7:18;18:15 fatal (1) 38:20 federal (23) 8:2,5,5,10;20:10,23;23:21; 38:1,7;44:1,3,6,11;58:10,12; 59:7,15,18,22;62:3;63:19,23; 70:13 feds (1) 73:14 feed (2) 83:10,23 feel (5) 32:1;52:20;53:14;64:13;82:2 felt (2) 13:18;14:15 field (4) 23:19;58:2;60:11;69:23 figured (1) 38:15 financially (1) 85:11 find (4) 26:12,17,18;37:13 finding (1) 30:11 findings (1) 78:6 fine (3) 22:2;42:9,16 finest (1) 21:23 firmly (1) 53:1 first (8) 2:24;4:20;5:15;8:3;13:1; 27:11;48:22;73:13 fit (1)</p>
<p style="text-align: center;">E</p> <p>earlier (7) 9:1;20:12;25:4;27:13;40:25; 43:19;56:7 early (1) 33:21 easier (4) 17:10;62:8,10,13 easily (1) 19:17 educate (1) 66:17 effectively (1) 17:5 efficiently (1) 61:15 effort (4) 11:11,22;26:3;45:5 either (5) 31:6,6;52:14;75:8;81:4 elaborate (2) 43:3;61:4 elimination (1) 11:15 else (21) 23:9;28:3;30:23;31:7;32:10; 33:17;36:1;40:2;45:8;47:25; 55:16;59:10;64:10;65:24;71:8, 11;75:17,20;76:3,12;83:5 e-mail (2) 50:9;54:2 emergency (2) 57:20;61:18</p>			

59:4 fits (2) 19:21;25:2 five (18) 2:4,9;3:6,8,9,11;4:5;5:17; 7:12,13;9:6;16:8;34:14,21,25; 35:21;47:10;50:15 FMCSA (6) 3:20;8:22;22:13,15;35:10; 38:21 focus (1) 42:5 folks (11) 12:8;39:23;49:13;77:1,11,15; 79:11;82:5;83:19,24;84:3 follow (3) 22:25;30:7;41:17 Following (2) 4:1;35:17 followup (8) 19:6;23:10;24:4;44:14,17; 61:24;62:16;69:3 force (1) 59:6 foregoing (1) 85:7 forgive (1) 51:2 form (1) 7:12 formal (1) 37:11 formalize (1) 64:1 formalizes (1) 64:8 formally (1) 65:14 Formula (2) 70:6,13 forth (4) 41:9,10,20;67:1 forum (1) 9:20 forward (18) 9:12;27:20;39:19;40:20; 55:10;56:2,10;60:15,25;63:1, 10:69;21;72:22;76:7,22;77:7, 15:82:2 found (2) 3:22;35:13 four (7) 2:21;6:1;13:1;66:20;71:23; 73:7,8 four-hour (1) 6:4 frank (1) 55:6 frankly (1) 64:19 free (2) 31:11;32:1 frequently (1)	54:9 Frew (23) 4:22;13:23;17:23,25;27:11; 40:7,11,14,22;42:22,24;44:17, 19;45:1;52:11;55:4,15;61:1,3; 67:8;68:8,11,14 front (2) 7:20;18:20 frozen (1) 79:2 funding (1) 7:3 further (12) 4:7;21:12;35:22;53:15; 55:23;65:14,20;66:7;68:9,15; 77:23;85:10 future (4) 17:1,10;19:19;24:23	58:23 grateful (1) 52:12 Great (6) 30:23;31:10;40:17;76:6,8; 77:17 greater (1) 70:2 greatly (1) 27:13 ground (2) 53:13;54:12 grounds (1) 29:1 groundwork (1) 17:10 group (2) 66:13;69:22 groups (1) 17:19 grow (1) 73:6 growing (1) 51:15 guess (6) 14:6;22:24;23:13;43:23; 65:3;78:2 guessing (1) 72:17 guidelines (1) 17:6 guys (1) 54:16	haul (2) 7:19;70:21 headquarters (20) 4:13;9:20;10:21;15:22;28:4; 31:15;32:11;33:16;34:23;37:2; 46:12;47:2;48:15;49:5,14; 55:17;60:18;69:2;83:4;84:4 hear (4) 49:4,24;50:8;67:6 heard (5) 14:7;32:21;55:22;63:17; 75:24 hearing (11) 4:8,9;6:4;32:6;42:16;49:19, 21;64:13;71:14;83:24;84:8 hearings (1) 53:12 heavier (1) 56:15 heavy (1) 30:6 held (4) 4:4;7:8;10:2;35:19 Hello (1) 40:18 help (2) 66:25;83:22 helpful (1) 77:15 helping (1) 54:24 helps (3) 26:6;64:9;74:18 Hey (1) 40:16 Hi (4) 11:4;12:24;37:6;40:19 high (1) 44:3 higher (2) 29:10;63:4 Highway (8) 16:6;50:19;51:10,12,15,16; 54:3,9 history (1) 79:15 Hobday-Sanchez (7) 5:3,14,19,21;18:14;59:11,23 hold (1) 72:18 holder (1) 22:6 holders (1) 41:7 home (2) 3:22;35:14 hope (2) 14:23;16:11 hopefully (2) 12:9;62:20 hoping (1) 42:4 horizontal (1)
	G		
	general (2) 80:9,10 gentleman (1) 83:14 geometrics (1) 80:14 given (5) 25:14;62:7;78:4;83:18;85:8 gives (2) 25:16;53:11 giving (2) 5:10;9:9 glare (1) 33:24 goal (4) 16:23;27:1,2;52:3 goals (1) 54:10 goes (1) 84:5 Good (22) 2:1;14:3;15:21;19:13;27:2,4; 35:11;36:22;39:19,20;45:2,23; 46:11;51:7;55:12;66:10;68:21; 70:17;77:20;78:1;83:12,22 governing (3) 2:4;34:15;50:15 government (1) 16:20 Governmental (2) 5:4,22 Governor (3) 2:15,17;14:9 governor's (2) 11:23;42:5 grades (2) 79:25;80:17 Grain (1) 74:10 grandfathered (1) 60:5 grant (1)		
		H	
		half (1) 26:24 hand (3) 10:13;30:8;85:13 handbook (3) 53:16,17;68:16 handling (1) 25:21 hands (4) 31:19;33:20;46:17;55:20 happen (3) 38:9;39:3;61:17 happened (1) 51:18 happening (3) 37:15;43:20,21 happens (1) 61:9 happy (2) 60:2;82:4 harmonization (8) 2:19;3:16;6:24;8:13,15; 16:24;24:24;35:6 harmonize (2) 18:8,9 hate (1) 54:14	

80:14 hour (1) 33:22 huge (6) 6:17;52:18,19;72:15,25;75:5	incredibly (1) 51:20 indicated (4) 40:14,20;43:1;56:7 indication (1) 10:13 indicative (1) 52:3 individual (1) 77:18 industry (4) 29:10;62:20;69:21;72:9 information (3) 7:5;11:14;52:18 initial (1) 36:3 initially (1) 20:21 initiated (1) 2:14 input (2) 28:22;52:3 inside (1) 53:21 inspection (4) 12:18;28:24;29:7;41:19 inspections (10) 3:15;6:18,19,20,21;7:22,23, 24;20:9;35:4 inspector (3) 29:8;74:1,2 inspectors (1) 73:20 install (1) 81:1 instances (1) 81:1 instead (1) 18:22 integrity (1) 78:13 intend (1) 23:5 intent (3) 37:16,21;38:6 interact (1) 27:1 interaction (2) 25:25;57:22 interest (5) 2:11;34:3,23;44:8;49:14 interested (17) 2:10;10:14;11:17;15:6;24:8; 31:5;32:6,15;36:15,16;46:13; 47:16;49:3,6,12;69:11;85:12 interfering (1) 44:11 interject (2) 61:1;75:9 internally (1) 11:12 internet (1) 11:16	interpretation (1) 14:6 interruption (1) 24:13 interstate (4) 21:2;22:11,16;43:7 interstates (3) 3:17;8:13;35:6 into (23) 3:5;12:25;14:16;18:2;31:11; 37:12;39:7;42:3;43:15;48:21; 51:3;53:2,24;61:18;63:21; 67:21;68:1;71:17;74:20;77:7, 23;81:4;83:2 intrastate (2) 43:10;63:20 introduction (1) 34:11 invalid (2) 28:25;29:12 involve (1) 68:17 involved (6) 38:12,21;68:12,15,22,23 ISP (1) 38:10 issue (13) 6:17;29:20;30:2;44:2;55:7; 59:5;62:3,9,14;63:22;66:1,5; 78:25 issues (7) 26:13;38:22;42:7,11,12; 79:20;82:4 issuing (1) 80:11 ITD (19) 2:22;6:5;10:21;11:13;16:22; 17:18;20:22;25:5,16;34:23; 35:14;37:16;38:10;49:13; 51:22;52:9;53:15,24;76:8 items (1) 29:6	52:17 July (6) 4:2;11:20;35:18;42:20; 44:25;85:14 jumped (1) 20:2 June (2) 3:1,7 jurisdiction (13) 16:21,24,25;17:4;19:17; 24:23;25:10,15,20;26:1,5,6,20 jurisdictions (17) 18:2;19:20;22:21;23:17; 25:2,11;26:13,22;27:17;57:3,3; 58:4;60:9;63:3;65:4;66:18; 68:19
I		K	
Idaho (41) 2:2,15,25;3:13,23;4:21,23; 5:1,2,4;13:2,9;16:20;18:10,24, 24;19:18;20:16;25:25;26:14, 23;34:12;37:10;38:23,25;41:8, 18;47:9;50:19;51:9,12,15;57:5; 60:6;61:25;63:1;65:1,5,17; 76:5;85:22 Idaho-based (1) 39:1 Idaho's (1) 75:9 IDAPA (8) 3:6;18:7;19:11;24:20;28:14; 34:15;35:1;47:10 idea (3) 25:6;51:16;53:9 ideas (3) 27:20;41:10;53:2 identify (5) 5:10,11;10:25;15:25;37:18 impact (1) 44:9 Implementation (1) 65:9 important (3) 5:8;8:9;24:25 improve (2) 57:19;68:18 improved (1) 2:21 improvement (1) 42:10 improving (1) 2:20 inclement (2) 78:21,23 include (3) 14:1;25:6;68:18 included (2) 6:3;53:17 includes (1) 29:13 including (2) 2:18;57:17 incorporated (3) 3:5;8:3,11 increase (1) 80:1 increased (1) 64:25 increases (1) 57:8 increasing (1) 57:7	Jeff (31) 15:24;16:5;17:25;18:6,15; 19:7,25;24:12;27:11,24;28:13; 30:23;32:1,8;56:6;59:9,24; 60:25;62:16;65:2,20;66:10; 67:12;68:11;69:1,11;71:5,15; 73:10;74:17;76:3 Jeff's (6) 24:4,9;28:5,9;31:16,22 Jerry (3) 11:6;41:25;44:23 job (3) 52:5;54:16,23 join (3) 26:14;31:11;32:1 joined (2) 34:10;47:7 joint (1)	KAMRA (2) 85:3,19 keep (2) 6:8;34:7 keeping (2) 15:17;69:22 KEOUGH (16) 11:4,5,10;12:12,16;14:5,19, 24;40:13,16,18;41:23;44:15, 22;45:3;50:5 key (2) 11:6;44:23 kicks (1) 73:18 kind (6) 6:14;43:3;55:8;59:1;74:13; 83:4 kinds (1) 78:23 knowing (1) 73:2 knowledge (1) 51:5 knows (1) 56:22	
	J	L	
		labeled (2) 3:25;35:15 lacks (2) 30:12;52:9 lane (2) 61:19;80:24 lanes (4) 80:20,22,23;81:1 language (20) 3:8,9,21;12:17;13:11;14:1; 18:16,19,22;35:12;37:14,16,17; 38:6,16;39:21,25;53:2;58:9,20 Lantz (1) 54:22 lapses (1) 12:6	

large (2) 25:19;81:2	63:4;69:23;70:8	Logging (6) 11:6,18,19;41:24;42:12,18	5:2
larger (5) 22:22;57:13;59:2;72:7,8	levels (1) 60:11	long (2) 43:6;79:25	mandate (2) 59:4;70:20
last (3) 38:23;53:25;71:21	LHTAC (21) 16:14;19:8,14,19;22:19; 23:16;24:21,25;25:1;26:12; 28:23;31:5;56:14;57:2,24;65:5; 66:15;68:19;69:13;70:9;76:8	longer (7) 20:10;21:7;22:4;34:7;43:13; 60:4;64:3	mandates (1) 58:13
Lastly (1) 8:20	LHTAC's (2) 16:23;77:5	look (17) 25:11,20,22;39:24;57:9; 58:15;62:20;67:20;68:2,17,17; 71:22;76:2,7;78:15;79:1;81:17	mandatory (2) 59:16;79:13
late (1) 58:16	liked (1) 77:12	looked (4) 14:14;63:15,18;64:19	manner (1) 80:3
later (3) 12:10;20:6;82:18	likely (1) 42:19	looking (7) 20:22;29:19;39:22;44:12; 55:10;56:17;63:4	manual (1) 53:22
Laura (2) 54:22,22	limit (1) 80:12	looks (2) 80:18;83:16	manufactured (9) 8:9;58:11,17,19,22;59:20,21; 61:7,7
law (18) 6:20;12:20;17:2;21:14,18; 23:20,21;25:14,16;26:16; 29:14;30:7;51:17;60:3;71:22; 72:3,23,24	limitations (1) 56:13	lose (2) 72:5;80:1	many (8) 6:17;9:3;21:5;41:15,17; 57:15;59:12;60:7
lawmaking (1) 25:12	limits (1) 79:1	losing (1) 79:15	map (1) 67:4
laws (1) 65:1	line (3) 9:22,24;31:12	lot (8) 6:10;14:14,14;33:21;40:5; 67:19;80:10;83:20	maps (9) 66:18,21,23,24;67:3,15,20; 68:17,18
lawyer (3) 16:18;25:13;26:17	lined (1) 42:2	love (2) 53:23;54:20	marvelous (1) 54:16
lead (2) 30:14;41:25	lines (1) 22:12	lowest (1) 69:19	match (1) 62:11
learn (1) 51:13	list (1) 61:5	lunch (2) 14:24;33:22	matter (6) 4:14,17,19;10:3;27:5;66:8
learning (1) 54:23	listening (1) 69:7	LYON (8) 37:6,9,10;38:3,5;39:6,10,12	May (9) 6:2;11:13,14;34:10;38:9; 70:18;75:3;82:18;85:24
least (5) 26:1;42:6;53:11;66:20;67:22	littering (1) 74:12		maybe (11) 23:18;39:1,2;44:17;56:22; 60:6;64:15;68:16,16;71:24; 75:4
leave (1) 83:1	little (12) 5:24;14:23;16:11;34:7; 40:12;43:3;50:4;55:9;60:6; 63:9;68:9;74:19	M	McKensy (2) 37:9,22
led (1) 5:16	live (1) 49:10	main (1) 6:12	McKensy's (1) 39:15
left (1) 19:16	load (4) 67:16;72:6;78:13;80:7	maintained (2) 58:10,21	mean (2) 28:22;62:5
legal (3) 52:8;70:17;80:6	loaders (1) 72:11	maintaining (1) 8:7	meaning (1) 67:3
legally (1) 26:8	loading (1) 72:11	Major (39) 4:20,22;12:22,23,24,24; 13:23;14:12,13;20:12,18,19; 21:12,19;22:3,7;28:22;29:14; 30:9,17,19;38:12,14;41:3,3; 43:1,3,5;58:7,8;59:12,19; 61:10;62:4;63:12,14;64:13,18; 65:11	means (1) 74:7
legislation (7) 16:17;17:18,19;25:22;52:23, 25:65:6	loads (12) 2:5;6:21;7:24;12:19;13:19; 34:16;50:16;56:19;59:2;78:22; 79:23;80:6	majority (1) 53:5	mechanism (1) 52:13
legislative (5) 7:17;21:1;25:16;65:19;71:16	local (34) 7:3;16:5,21,24,25;17:4,11; 18:2;19:17,20;21:13;22:21; 24:22,23;25:2,10,10,15,20; 26:5,6,9,12,20;27:16;52:10; 57:3,3;58:4;60:9;63:3;65:4; 66:18;68:19	Major's (1) 59:25	meet (2) 29:11;44:4
legislatively (1) 25:14	locally (1) 16:25	makes (5) 16:23;26:9;66:15;67:4;74:22	Meeting (18) 2:3,8;3:1;4:1;7:8,9;8:25; 9:19;34:14,19;35:17;40:6;49:7, 19;50:2;75:24;76:13;83:3
legislature (3) 18:18;65:12,16	locals (5) 25:6;53:17;68:12,15,17	making (13) 15:6;30:25;32:16;36:15,17; 37:15;43:14;46:13;48:16,22; 49:3,14;54:16	member (1) 58:6
length (6) 3:14;16:22;17:5;18:23;35:3; 70:17	location (1) 73:18	man (1) 26:24	members (6) 10:5,9;11:17;12:3;39:15; 51:20
less (1) 40:23	locations (3) 79:12,20;80:19	manager (1)	memorandums (1) 52:16
letter (2) 11:23;54:1			mention (4) 8:24;13:5,15;43:23
letting (1) 36:13			mentioned (6)
level (8) 22:11,14;44:7;52:21;58:1;			

6:16;18:15;56:22;65:7; 68:11,14 message (1) 42:16 messaging (1) 24:17 met (2) 3:7;54:11 method (1) 26:11 methodology (1) 80:23 Michelle (1) 50:8 microphone (1) 9:21 might (19) 17:23;29:14;30:25;31:8; 56:8,21,23;61:4;65:10;68:8; 73:11,12;75:8;77:9,15;79:2,3; 81:20;83:17 MILES (62) 16:4,5,10,13;17:21;18:7; 19:8,11,14;20:2,6,8,14;21:10, 12,22;3,18,24;23:7,13,24; 24:14,16,19;27:25;28:14,17,21; 29:5,17;30:16,24;31:4;32:7; 51:12;56:6,12,21;57:1;58:5; 59:25;61:24;62:15,18,24;65:3, 9,22;66:12;68:4,20,25;69:12; 70:23;71:19,21;74:16,18; 75:10,12,16;76:4 mind (3) 6:8;16:7;29:10 minimum (1) 63:18 minus (1) 74:1 minute (1) 69:13 minutes (2) 33:25;46:23 mirrored (1) 21:16 miscommunication (1) 11:12 misdemeanor (1) 21:23 missed (3) 42:8;44:20,20 missing (1) 74:14 mix (1) 62:11 mixing (2) 61:6,22 mixture (1) 61:8 moderator (2) 2:8;34:19 modifying (1) 18:22 Molly (1)	51:23 moment (4) 6:9;15:15;28:18;68:11 monitor (2) 45:7;81:8 monitors (2) 76:21;83:1 month (2) 6:2;9:1 months (1) 53:9 more (28) 13:12;19:17;31:5;42:19; 43:3,11;44:1,5;46:20;49:15; 53:3,14;57:8;59:6,22;61:5,15; 63:22;64:8;65:2;66:23;73:5,5; 74:23;77:18;82:21;83:6,20 most (5) 25:20;39:1;51:13;60:12; 72:10 motion (1) 26:8 motor (17) 4:23;5:2;8:5,5;13:3,10;21:21, 22;38:1,6,8;41:8,14,17;58:10, 12;65:13 mountain (1) 4:10 move (14) 9:12;14:25;17:13;23:4;24:2, 15;27:24;28:13;60:14,15; 62:17,22;69:11;76:7 Moving (4) 8:12;18:7;69:21;81:3 much (20) 5:22;14:19;17:8;26:11;30:1; 31:5;32:18;33:5,11;47:22;48:1, 9;52:3,20;53:3,14;58:1;62:10; 76:9;83:19 multiple (1) 67:14 Mundo (5) 51:22;54:2;56:22;67:8,9 myself (1) 74:24	2:3,24;34:13;36:4;39:20; 47:8;50:14 negotiations (2) 10:4;35:19 new (8) 12:17;18:22;20:9;47:15; 49:5;51:6;81:7;84:1 newer (1) 58:15 next (14) 9:9,12,16;20:25;21:9;24:15; 27:24;52:25;60:15;62:17; 65:12,18;66:11;71:20 nine (1) 70:14 nine-axle (2) 70:16,18 nineties (3) 58:13,16,25 nobody (4) 15:14;33:3,8;48:4 non-ABS (1) 61:9 noncompliance (1) 29:20 none (1) 42:11 nonreducible (1) 67:17 nonstandard (1) 57:22 noon (1) 12:9 nor (1) 85:11 normal (1) 43:16 northern (2) 63:3;65:5 Notary (1) 85:20 note (2) 77:10;78:7 notes (1) 30:20 notice (1) 73:8 noticed (1) 82:23 number (27) 2:17,19,20,21;6:19,21,22,22, 23,23,24,25;7:15,23,24,25;8:6, 14,16,18,18,22;13:5;77:8; 80:20;82:9,10 numbers (1) 80:19	obvious (1) 80:18 obviously (2) 70:16;83:19 off (5) 6:18;27:11;30:9;73:13;83:10 office (2) 48:21;85:21 Officer (1) 20:11 offices (2) 4:12;31:21 offload (2) 74:5,11 offloaded (1) 73:17 offloading (1) 75:1 off-track (2) 17:4;18:3 off-tracking (5) 16:17,22;17:6,9;70:19 often (1) 39:3 old (2) 63:20;72:22 older (2) 58:23;59:1 one (68) 2:18;4:11;5:8;6:8,12;7:16; 13:6,15;15:19;16:14,19;17:1, 11;19:14;21:8,8;24:21;25:9,13; 26:1,2;27:3;30:10;32:12,12; 35:25;36:16,24;37:24;39:22; 42:24;43:14,18,20,25;45:21; 46:6,10;47:14,14,20,24,25; 48:11,16,24;52:12;53:25; 56:19;60:24;61:11,16,21;64:7; 66:11,14;67:18;70:14;72:1; 74:9,10,10,10;75:2;77:18;78:9, 20;80:22 ones (2) 39:4;42:13 one's (3) 33:13;36:20;46:6 only (9) 5:8;20:19;21:6;23:13;42:14; 60:10;68:1;70:20;72:19 onto (8) 8:16;18:7;23:4;24:3,15; 27:24;60:15;62:17 onus (1) 29:10 open (8) 6:1;9:7;27:18;31:2;32:3; 53:4,4;55:6 opening (1) 9:19 operate (4) 2:6;34:17;43:12;50:17 operating (1) 41:15 operations (1)
	N		
	name (11) 2:7;5:10,21;10:25;11:4;16:4; 34:18;37:8,9;51:8;54:18 national (1) 60:7 necessarily (1) 38:8 need (6) 10:12;13:7;14:9,18;16:2; 43:16 needed (1) 81:20 needs (3) 2:19;39:25;52:24 Negotiated (7)	observing (2) 48:7;66:4 obtained (1) 19:18	
		O	

<p>4:21 operators (2) 23:17;73:1 opinions (1) 53:21 opportunity (8) 5:6,9;6:10;51:21;54:7;56:5; 76:6;80:2 oppose (1) 54:5 opt (2) 25:7;26:21 opted (1) 19:23 Option (2) 9:13;68:2 options (1) 9:2 order (9) 3:20;8:21;9:23;24:17;35:9; 38:22;49:7;67:23;70:20 orders (2) 38:1,17 ordinance (1) 26:7 organization (2) 11:19,22 organizations (3) 16:20;57:15;72:11 original (2) 23:25;42:3 originally (1) 8:8 others (1) 11:13 Otherwise (2) 30:7;77:1 Otter (1) 2:15 ought (1) 78:5 ours (1) 52:24 out (24) 18:25;19:23;25:7;26:19,21; 29:2,6;30:14;32:9;38:7,15,25; 39:14,24;58:24;61:18;66:3; 71:6;74:19;76:11;79:16;82:16; 83:9,16 outlined (1) 2:16 out-of-service (8) 3:20;8:21;35:9;37:14;38:1,9, 17,22 outset (1) 2:11 over (22) 6:2;16:22;21:23;22:13,22; 37:19;38:15,23;43:2;51:13,25; 56:10;57:25;59:16;63:5;69:14; 72:8;73:2,4,21;74:9,10 overall (1) 6:13</p>	<p>overhang (5) 3:14;7:20;18:17,20;35:3 overhangs (1) 18:25 overlap (2) 67:18;78:8 overlegal (12) 2:6;6:21;7:1,24;9:2,15; 19:16;34:17;41:16;50:17; 69:14;72:24 overload (2) 72:3,4 overloading (1) 73:15 overriding (1) 54:15 oversight (1) 20:20 oversized (3) 12:18;13:19;78:22 overwhelmed (1) 54:7 own (4) 25:11,21;29:22;57:9 owner (5) 6:19;7:23;20:9;28:23;29:7 owner's (1) 29:8</p>	<p>68:19 party (1) 85:11 pass (2) 18:18;81:5 passed (2) 7:18;20:23 passenger (2) 73:8,9 passing (7) 80:22,23,24;81:1,5,11,12 past (2) 7:17;18:18 path (1) 53:8 patience (3) 34:4;55:10;83:11 pavement (1) 80:5 pavements (2) 80:8;81:19 penalties (2) 7:2;8:23 people (12) 9:4;11:17;33:22;37:2;39:22; 48:15;51:13;54:12;62:5;67:19; 69:20;81:2 people's (1) 8:1 per (1) 21:24 percent (20) 29:23;51:14;57:8,9,20;72:3, 6,8,14,14,23,25;73:5,12,16,18, 24;74:4,25;75:10 percentage (2) 73:6;75:4 perhaps (1) 56:8 period (6) 4:2;6:1,4;35:18;77:11;79:2 permit (25) 2:6;3:25;17:6;21:25;22:1,5; 23:1;25:21;29:1,12,19;30:15; 34:17;35:16;41:6,16,16;50:17; 52:9;68:4;70:23;72:2,5;74:19; 75:13 permit-by-permit (1) 17:8 permits (5) 3:19;8:21;19:17;35:9;69:14 permitting (19) 2:4,20;3:17;6:23;8:14,15; 17:1,10,12;19:15;26:1,13; 34:15;35:6;50:16;66:13;76:7; 78:21;81:17 person (7) 5:8;11:6;21:18;26:24;44:23; 60:1;62:21 personally (1) 11:21 persons (4) 2:10;4:11;5:7;49:12</p>	<p>perspective (1) 13:22 phasing (1) 58:13 phenomenal (1) 73:7 phone (1) 11:16 piece (2) 42:25;78:8 place (6) 9:24;13:17;29:15;55:12; 59:18;65:1 placed (1) 38:25 places (1) 60:12 plan (4) 10:1;38:16;39:4;65:18 planned (1) 50:6 planning (2) 65:11;83:20 play (2) 16:19;25:13 playing (3) 58:1;60:11;69:23 please (7) 5:10,11;32:1;37:8;42:7; 48:23;49:7 plenty (1) 8:10 plus (1) 74:1 pm (2) 4:9,9 podium (12) 9:21,23;10:15,15;11:3;15:24; 28:8;33:18;49:2,20;50:22; 83:15 point (39) 5:25;10:19,23;12:1;14:20; 15:2,8,23;20:24;22:18;24:19; 27:9;31:12;32:9,16;35:24; 39:24;42:6;44:23;45:8;46:14, 19;47:1,3,12,16;48:18;50:7,18; 60:5;64:11;73:16;74:3,5;79:22; 82:14,17,22;83:14 pointed (1) 30:14 points (1) 80:18 Police (5) 4:21;12:25;20:16;41:9,18 Police's (1) 13:3 Policy (2) 11:7;52:19 political (1) 54:14 polled (1) 48:14 population (1)</p>
P			
	<p>page (4) 3:23;7:6;35:14,14 pages (1) 6:3 palatable (1) 74:23 panel (14) 10:4,5,9;12:3,11;27:5,9; 39:15;58:6;59:10;64:10;71:3; 75:17;76:5 paraphrase (1) 14:9 part (19) 20:20;21:5;23:14,21;26:9; 38:17;42:24;43:2,5;45:4;63:3; 64:1,3,15;65:12,12;66:16,16; 74:22 participants (1) 34:22 participate (3) 11:8,16;52:20 participating (2) 5:20;11:14 participation (3) 2:12;34:24;76:10 particular (4) 11:24;50:22;65:25;69:4 particularly (1) 41:18 partner (1) 76:8 partners (1)</p>		

51:14 port (1) 73:19 positive (1) 25:25 possibility (4) 17:9,11,12;70:17 possible (5) 3:12;26:15;35:1;52:4;62:4 possibly (2) 63:11;70:2 Post (1) 85:21 posted (1) 15:17 potatoes (2) 74:8,9 potential (10) 3:5,8;22:14;44:2;61:17,23; 62:7,12;63:21;79:20 pounds (15) 57:7;70:14;72:9,19,25;73:4, 5,21,24,25;75:5,6;78:11;79:24; 80:11 power (4) 29:1;52:17;61:6,13 powers (2) 16:21;25:16 practice (1) 81:22 predicted (1) 57:23 preemption (6) 44:2,11;59:5;62:3,14;63:21 preface (1) 51:19 prepared (1) 2:22 present (14) 10:19,22;27:20;28:25;31:6; 32:20;36:1,14;45:19;50:2,20; 65:24;76:12,16 presentation (1) 58:3 presentations (2) 57:15;69:13 presented (5) 2:25;4:6;7:10;35:22;71:17 presenting (1) 78:6 preserve (1) 9:24 president (1) 44:23 pretty (4) 39:2;44:3;58:1;67:5 previous (2) 20:14;29:7 prior (5) 78:5,10;79:23;80:11;81:17 probably (9) 26:18,18,24;38:12,24;42:19; 56:13;65:1;67:1	problem (5) 16:12;19:24;24:16;59:3;68:7 problematic (4) 16:23;18:2;25:22;26:17 problems (6) 25:9;43:25;61:11,23;79:15; 81:9 procedure (2) 4:8;26:8 Procedures (1) 3:13 proceed (1) 66:10 proceedings (2) 66:4;85:5 process (26) 2:5,14,20,24;7:1;11:22;27:2; 33:21;34:16,19;37:21;40:1; 42:3;47:8;50:16;52:21;53:3,5, 6,10,11,12,16;54:14,24;78:21 processes (3) 17:1;82:1,3 produces (1) 53:19 Program (3) 5:4;73:14;81:17 programmed (1) 81:20 programs (1) 81:19 projects (2) 81:18,19 promote (4) 17:10;26:3;65:3;70:6 promotes (1) 24:21 promoting (1) 65:6 promotion (1) 24:24 promulgated (2) 41:8,18 properly (2) 19:20;25:2 proposal (1) 18:8 proposals (2) 3:21;35:13 propose (1) 9:1 proposed (17) 2:3,9;4:5;16:14;19:19;23:15; 25:1;34:14,21;35:21;37:25; 41:22;50:14;56:14;69:15;75:3; 80:7 provide (3) 5:14;41:12;80:2 prudent (2) 13:18;14:15 public (4) 6:4;11:7;47:21;85:20 purport (1) 26:16	purpose (2) 27:15;55:8 purview (1) 79:10 put (13) 14:15;17:6;19:23;31:8;39:7; 50:23;53:2,24;57:16;79:24; 80:24;81:12,12 Q qualification (3) 28:24;29:8;63:5 qualifications (6) 2:18;6:22;7:25;8:19;62:25; 66:1 qualified (2) 22:4,17 quarters (1) 76:13 quickly (1) 77:23 quite (1) 72:10 quo (2) 42:9;60:2 quote (1) 60:9 R raise (2) 10:12;63:9 raised (5) 2:23;6:17;31:19;33:21;55:20 Ramon (11) 5:3,13,18,21;9:18;18:12; 19:3;51:22;54:2;59:10;60:1 ramps (4) 79:19,19,21,25 ran (1) 63:21 random (1) 66:13 rare (1) 39:2 rarely (1) 51:2 rather (1) 46:17 ratifying (1) 26:7 rationale (1) 80:24 reach (1) 70:14 read (3) 25:23;53:19;74:20 reading (2) 74:19;75:13 re-adjourn (1) 46:23 ready (3)	52:22;60:15;76:23 real (1) 59:7 realize (2) 12:8;70:4 really (11) 13:1;17:5;20:20;27:8,14; 33:24;42:6,12;54:7;55:7;84:7 rear (2) 7:20;18:20 reason (3) 29:18;62:12;79:5 reasonable (1) 7:2 reasoning (1) 23:2 reasons (1) 29:17 receive (1) 2:8 received (6) 2:23;4:3;6:2;9:3;35:19;59:13 receiving (3) 4:10;9:22;34:20 recognize (3) 18:1;52:10;79:11 recommendation (2) 63:8;78:6 recommendations (1) 9:5 recommending (1) 78:10 reconsideration (1) 63:11 reconsidered (1) 73:3 reconvene (1) 34:2 record (3) 16:1,2;47:6 recording (1) 85:5 redoing (1) 53:16 reduce (1) 79:4 reduced (1) 67:17 reducing (1) 18:10 Reese (37) 4:20,22;12:23,23,24,24; 13:23;14:12,13;20:12,18,19; 21:12,19;22:3,7;28:22;29:14; 30:9,17,19;38:12,14;41:3,3; 43:1,3,5;58:7,8;59:19;61:10; 62:4;63:12,14;64:18;65:11 reference (5) 8:4;19:1,22;38:6;43:21 referenced (2) 7:9;38:18 referencing (1) 38:16
---	--	--	---

referring (1) 74:4 refers (1) 73:16 reflection (3) 72:24;75:12,13 reflects (1) 37:16 regard (4) 19:7;28:5;31:13;77:20 regarding (17) 2:3;12:17;23:11;24:5,9; 31:16,22;34:14;36:2;37:4; 39:16;50:14;56:9;60:19;69:3,8; 82:9 regards (7) 8:7,7,22;12:16;28:14;32:21; 42:4 regional (3) 2:19;6:24;8:15 regularly (1) 8:25 regulate (1) 79:7 regulated (1) 13:3 regulation (2) 59:22;63:19 regulations (17) 6:25;8:2,5,10;14:17;21:21; 38:18;43:24;44:3,6,52;16; 58:12;59:6,7,14,15,18 reiterate (1) 63:2 reiterating (1) 24:20 relates (1) 37:24 relationship (1) 27:16 relative (1) 85:10 remarks (3) 51:19;54:19;77:24 remember (2) 5:8;26:16 remind (2) 35:12;47:7 reminder (2) 2:13;50:13 removing (1) 52:7 remuneration (1) 21:17 repair (1) 12:7 repeat (1) 5:22 reply (1) 75:25 Reporter (1) 85:4 REPORTER'S (1)	85:1 reports (1) 29:22 represent (4) 5:11;10:25;16:1;37:8 representatives (1) 49:18 represents (1) 51:11 request (5) 2:15;17:18;57:24;78:3;80:12 requested (1) 60:12 requests (1) 80:22 require (1) 61:25 required (9) 2:6;13:1,4;34:17;50:17; 59:21;70:3;73:17;74:5 requirement (3) 18:3;59:16;70:24 requirements (18) 2:5;3:15,18;7:22;12:18; 13:16;20:9;21:7;34:16;35:4,7; 41:19,19;50:16;61:9;64:2,6; 79:14 research (3) 9:11;26:25;30:1 resides (1) 51:14 resources (1) 41:10 respond (23) 10:11;12:23;18:12,14;24:4; 27:6,10;28:5;31:16,22;38:13; 55:18;58:6;60:18,22;67:7,8,9, 11;69:3,7;82:8,13 responded (1) 41:3 responding (2) 10:14;24:8 response (48) 10:8;14:4,8;15:3,9;17:16; 24:6,10;27:23;28:9,11;30:18; 31:9,18,24;32:23;33:19;39:17; 40:4;46:15;47:4;49:25;50:3; 55:3,4,19,25;59:9,24;60:20,23; 66:2,6,9;69:5,9;71:4,5,7,10,13; 75:19,22;76:1,15,20;82:11,15 rest (3) 30:11;69:22;71:6 restate (1) 57:24 restatement (1) 18:10 result (5) 6:6;7:7,11,18;18:17 retro (1) 59:4 retrofitted (1) 62:1 review (10)	3:7,10;4:3;5:14;7:7;11:23; 16:16;34:25;35:19;71:22 reviewed (1) 62:19 revisited (1) 71:25 revocation (5) 3:19;8:21;29:19;30:15;35:9 revoked (1) 23:2 rewritten (1) 26:4 Reymundo (3) 5:1;19:3;70:10 right (17) 3:24;6:18;12:7;13:13;14:25; 16:9;28:2;32:2;35:15;37:10; 38:2;46:16;58:9;64:13;66:7; 67:13;68:5 Rindlisbacher (6) 4:24;77:2,5,22;78:2;82:20 road (4) 6:23;30:1;42:14;80:13 roads (3) 19:16;24:22;81:8 roadside (1) 38:10 roadway (9) 21:14;77:8,12;78:8;79:2; 80:3,14;81:10,25 roadways (2) 70:1;81:7 Rodriguez (5) 5:1;19:5;67:11;70:11,25 room (6) 42:10;45:8,8;50:2;76:13; 83:13 rooms (5) 49:19,19;75:24;76:22;83:3 rotating (1) 5:6 round (3) 2:24;5:15;36:3 route (5) 9:13;17:7;78:10,12,18 routes (3) 79:14,24;81:18 rule (70) 3:8;4:5;5:12;7:21;8:16;9:5; 12:20;13:19;14:16;16:15;18:7, 9,11;19:9,11,23;20:15,20,23; 21:16;23:5,11,12,15;24:3,5,9, 15,24;25:10,11,12,13,15,21; 26:4;27:1,24;28:5,10,15;29:7; 30:11;35:21;37:25;41:1;43:15; 44:1,2;50:22,24;51:1;52:7; 53:6,10;58:9;59:17;63:8;64:21, 24;65:17;67:25;71:1,16,22; 72:2;75:8,13;79:5;81:24 Rulemaking (17) 2:3,24;3:24,25;7:1,1,6;34:13; 35:14,15,16;36:4;39:21;41:6; 47:8;50:14;76:7	rules (64) 2:4,9;3:4,6,9,11,22;5:12,17; 6:15,25;7:12,14;9:6,7,8;10:24; 11:1;13:3,11;16:14,17,19;21:4, 15,21,22;25:16;26:5,9;28:6; 31:1,4;32:3,5;34:15,21,25; 36:2;37:4;41:8,11,17,22;43:17; 47:10;50:15,24;51:3,22;52:4, 15;53:7,7;59:14;64:14,23; 65:13;66:22;67:24;74:25;77:6, 7,13 run (5) 4:9;52:23;62:2;77:22;81:4 runaway (4) 79:19,19,21,25 rural (1) 57:5
S			
		safe (1) 80:3 safely (1) 74:12 safety (28) 2:5,18;6:11,18,19;7:23;8:5,6; 11:24;12:17;20:9;28:24;29:7, 21;30:4,5;34:16;38:2,8;42:4; 44:8;50:16;58:12;60:12;61:10; 62:9;80:9;81:1 safety-related (2) 42:14,15 safety-wise (1) 14:10 same (7) 41:17;54:10;56:17;64:16; 66:21;68:3;69:23 saying (4) 25:7;51:20;54:19;78:3 scale (3) 72:17;73:22,23 scales (1) 74:21 scheduled (2) 8:25;40:6 school (1) 51:17 scope (2) 7:2;51:2 Scott (1) 51:24 Scotty (1) 50:9 screen (1) 50:24 seal (1) 85:13 seated (2) 10:20;32:10 secondly (1) 49:1 Section (9) 3:12;13:6,25;18:8;29:2;	

30:12;35:2,2;57:1 sections (1) 54:4 seeing (3) 15:4,10;31:19 seek (1) 4:15 seeking (1) 34:2 seemed (1) 63:9 selected (1) 31:6 selection (1) 9:13 self-certified (1) 29:9 self-police (1) 29:11 sell (1) 62:13 selling (1) 62:8 Senate (2) 7:16;18:19 sense (1) 67:19 separate (2) 22:1,1 serious (1) 29:20 service (4) 2:21;38:7,25;66:17 services (2) 4:25;5:2 session (7) 7:17;18:18;19:2;21:1;50:14; 52:25;65:19 set (3) 9:21;17:9;85:13 setting (1) 24:23 seven (3) 3:3,4;7:11 several (8) 4:13;8:2;31:4;42:2;48:15; 77:10;78:7;79:14 severe (1) 38:21 severely (1) 44:9 shape (1) 27:19 shared (1) 26:2 sharing (1) 41:10 Sharp (1) 81:12 Shawn (18) 11:4;12:1,24;13:20;14:3; 40:8,13,19,21,22;41:6;42:21, 22;44:14,19;45:2,10;50:5	Sherich (1) 44:24 Shop (6) 17:1,11;19:15;24:21;26:3; 52:12 short (2) 81:23,25 Shorthand (1) 85:4 shovel (1) 74:9 show (1) 44:7 shut (2) 83:10,23 sic (1) 18:6 side (1) 11:13 Sight (4) 81:6,7,8,9 signed (1) 54:2 signing (1) 81:15 signs (1) 81:12 simplify (1) 67:22 single (1) 38:9 sit (1) 9:23 situation (6) 26:3;30:2,3;69:18;70:3; 74:13 situations (2) 25:20;30:4 six (1) 54:22 size (4) 7:4,16;73:13;79:4 skidding (1) 79:16 slower (2) 81:3,4 soft (1) 79:3 somebody (2) 22:8,12 somehow (2) 17:5;63:23 someone (10) 20:16;31:7;48:21;49:3,5,5; 50:11;66:24;72:17;83:2 sometimes (1) 61:8 soon (1) 6:4 sorry (3) 20:8;24:16;40:24 sort (3) 21:14;52:12;57:22	Sounds (1) 78:1 source (1) 68:6 speak (5) 5:9;23:3;39:15;65:25;66:5 SPEAKER (29) 15:14,19;32:17;33:3,8,13; 36:5,10,16,20,24;45:10,15,21; 46:2,6,10;47:17,20,24;48:4,8, 11;50:9;73:11;75:7,11,15;84:6 speaking (2) 5:9;30:5 special (4) 3:1;7:8,9;41:16 specialist (1) 5:4 specific (6) 3:21;18:20;35:13;51:1;64:2, 5 specifically (7) 7:22;8:17;12:17;18:25; 51:22;54:3;59:13 spectrum (1) 9:4 speed (3) 79:5;80:2,12 spell (1) 18:25 spirit (2) 68:16;77:5 spoke (1) 63:6 spoken (2) 11:12;20:11 sponsor (1) 52:25 spot (3) 73:17;74:6,11 spring (1) 79:1 staff (10) 2:22;6:5;9:10;25:5;36:11; 51:22;52:4;67:2;78:4;80:18 staff's (1) 63:8 stand (3) 49:8;62:19;83:15 Standard (11) 8:6;22:8;23:18;29:12;44:4, 12;58:11,22;62:2;63:23;66:23 standards (3) 20:10,11;60:7 standby (1) 49:8 standpoint (1) 17:7 stands (1) 52:22 start (5) 44:11,12;61:22;63:13;78:2 started (6) 46:25;49:11;50:12;53:8;	58:13;76:17 starting (1) 12:9 state (23) 4:12,21;5:7;10:7;12:25;13:3; 16:20;20:16;22:12;26:23; 34:22;37:8;41:8,18;44:6;51:12, 14;57:5,7,16;63:4;68:23;70:13 stated (1) 59:13 states (5) 26:4;44:3;59:8;70:5;72:20 stating (1) 5:11 status (2) 42:9;60:2 statute (12) 17:9;18:24;20:15;25:3; 26:19;53:3,3,24;64:21;65:17; 75:9,14 statutes (2) 18:24;19:21 statutorily (1) 52:14 statutory (7) 51:5;52:9,15,21;53:11,12; 70:12 stayed (1) 83:25 steep (1) 79:25 step (12) 11:3;28:8;30:25;32:13; 33:17;49:2,20;50:21;55:2; 57:14;68:21;76:22 stepping (3) 39:18;56:1;60:24 Steve (12) 2:7;5:19,23;11:4;12:12;14:5; 32:17;34:18;40:7;44:24;68:8; 73:11 stick (1) 14:23 stiffer (1) 59:14 still (11) 12:9;23:16;33:21,22;34:9; 40:8,13;41:16;50:6;74:24; 77:19 Stokes (1) 51:24 Stop (7) 17:1,11;19:15;24:21;26:2; 52:12;61:15 story (1) 51:18 straightforward (1) 66:19 stress (1) 80:7 stricter (1) 59:17 stringent (5)
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44:1,5;59:6,22;63:22 striping (2) 81:10,15 strive (1) 66:16 struck (2) 18:23;72:1 structural (1) 78:13 Stuart (10) 50:19,21;51:8;54:18,25;55:3; 56:2;68:12,13,14 Stuart's (3) 50:20;55:18,22 studies (1) 57:9 stuff (2) 58:25;74:25 subject (6) 4:13,17,19;10:3;27:5;66:8 submit (2) 39:7;44:24 submitted (3) 6:6,9;54:1 submitting (2) 11:20;37:11 Subsection (1) 13:25 suggest (2) 25:24;28:23 suggested (2) 47:9;64:16 suggestions (4) 27:8,19;31:16;56:10 summary (1) 2:22 sums (1) 9:17 supercede (1) 71:1 support (5) 6:24;16:23;19:14;52:7;83:12 supporting (3) 17:19;30:10;78:13 supports (2) 19:8;22:19 sure (19) 8:9;16:15;22:20;27:11; 37:15,23;49:16;50:7,11;51:25; 56:16,17;67:16;68:10;71:17; 74:14;78:12;80:7;83:25 surprised (1) 51:13 swing (1) 61:18 system (4) 8:8;25:21;52:10;59:4 systems (8) 23:20,25;29:22;56:24;57:16, 17,19;58:20	tab (2) 3:24;35:15 talk (8) 5:24;23:20;24:20;29:21,22; 32:4;50:23;62:20 talked (2) 13:7;68:21 talking (8) 20:1;32:4;38:19;39:4;56:18, 20;72:19;73:25 talks (5) 13:14;21:6;37:25;56:23;72:4 team (1) 52:9 Technical (2) 16:6;66:17 telling (1) 23:17 ten (4) 46:23;69:16,25;70:3 ten-axle (1) 70:21 ten-minute (1) 46:19 term (5) 6:25;9:3,6,7,15 termination (1) 29:1 terminology (1) 9:11 term-order (1) 43:16 terms (1) 8:6 testify (1) 15:15 testimony (6) 20:14;24:1;28:22;31:7;56:8; 85:8 Thanks (4) 30:19;45:2;69:1;84:6 thaw (1) 79:2 therefore (1) 60:10 therein (1) 42:17 thorough (1) 9:10 though (6) 22:24;25:24;42:24;70:15; 71:15;79:5 thought (1) 76:11 thoughts (6) 27:19,21;39:7;59:24;65:2; 66:8 three (13) 2:20;9:1,4,13;29:6,17;30:5, 12,13;39:2;66:20;73:7,8 throw (2) 71:6;72:14 thrown (1)	26:19 thumbs (2) 49:21;76:23 ticket (1) 72:5 tie (2) 18:2;62:9 tight (1) 72:18 times (3) 9:9;67:14;78:18 Title (2) 3:12;35:2 titled (1) 56:18 TOALSON (2) 85:3,19 today (24) 2:9;3:10,11;4:11,20;5:18; 7:14;11:5,8,14;12:21;14:11; 24:3;25:23;27:12;28:1;35:1; 42:1,6,9;60:17;71:24;72:10; 77:19 today's (4) 2:8;4:8;12:20;34:19 together (5) 40:24;53:13;54:8,10;55:6 tolerance (2) 73:15,19 topic (2) 80:9,10 totaled (1) 11:17 touch (1) 84:4 touching (3) 7:13,13;16:8 towards (2) 11:20;26:2 traceable (1) 26:19 track (1) 61:13 traction (1) 79:15 tractor (1) 61:15 tractors (1) 58:18 traffic (3) 52:10;80:13;81:2 trailer (5) 61:7,14,15,18;62:1 trailers (1) 58:18 training (10) 3:18;8:17;21:7;35:8;43:6,12; 63:16;64:2,5,6 transcribed (1) 85:6 transcription (1) 85:8 translate (1)	63:8 translated (1) 69:17 transparency (2) 54:13,15 transparent (1) 54:17 transport (1) 59:2 Transportation (23) 2:2,14,16,17;3:1,2,7,23;4:24; 5:1,3,5;19:18;25:25;26:14; 34:13;43:10;47:9;63:1;76:5; 78:4;79:22;80:5 transporters (1) 18:17 travel (2) 78:15,22 traveling (2) 78:17;80:17 tried (2) 67:15,15 triple (1) 43:13 truck (14) 3:17,25;6:22;8:14,15;35:6, 15;37:10;52:10;62:21;79:19, 19,21,25 truckers (1) 53:20 trucker's (1) 68:15 trucking (6) 53:16,17,21;57:4,12;60:3 trucks (6) 57:17;60:4;72:12;75:2; 80:14,16 true (2) 70:1;85:7 truly (1) 37:16 try (7) 12:7;34:7;43:25;54:20;59:3; 67:22;68:18 trying (5) 22:16;41:5,14;59:6;67:21 turn (3) 22:13;43:2;56:10 TV (2) 16:19;25:13 two (5) 2:19;39:2;53:8;63:17;64:4 two-tenths (1) 73:23 type (2) 38:9;67:16 typically (4) 59:1;73:21,22;79:24
T			U
			unable (1) 11:7

<p>undefined (1) 30:2</p> <p>under (16) 3:10,11;13:6;34:17,25;41:7, 15;56:12,24;59:18;62:13,24; 66:12,14;70:13;85:6</p> <p>underscore (2) 41:6,14</p> <p>understood (2) 31:1;72:16</p> <p>undertaken (1) 40:1</p> <p>undertaking (2) 15:7;47:8</p> <p>Unfortunately (2) 52:6;53:8</p> <p>UNIDENTIFIED (29) 15:14,19;32:17;33:3,8,13; 36:5,10,16,20,24;45:10,15,21; 46:2,6,10;47:17,20,24;48:4,8, 11;50:9;73:11;75:7,11,15;84:6</p> <p>unit (3) 29:2;61:6,13</p> <p>unless (3) 19:23;63:23;82:22</p> <p>up (40) 6:6;9:7,17,19,21;11:3;12:10; 21:23,25;24:17;31:8;32:13; 33:17;36:3;40:10,21,23;42:2, 13;46:17;49:20,21;50:21,23; 51:15;52:12;53:1;57:14;58:15; 62:1,2;66:23;68:23;76:3,23; 77:21;81:2,12,12;83:18</p> <p>update (1) 67:22</p> <p>uphill (1) 80:15</p> <p>usage (1) 66:25</p> <p>use (7) 9:11;57:12,15;58:20;60:10; 66:19,21</p> <p>used (5) 9:7,8;59:2;60:9;67:14</p> <p>using (5) 2:6;50:17;58:2,24;59:20</p> <p>utilizing (1) 67:17</p>	<p>7:19;12:18;19:16;20:10; 21:7;22:22;23:15;41:15;43:13; 56:15;57:16,25;63:5;64:3,7,24; 69:15;70:7;72:7;73:4,6;78:17; 79:5,15;80:1,3,16;81:3,4</p> <p>verbal (36) 15:3,9;17:16;24:6,10;28:11; 31:18,24;32:23;33:19;39:17; 40:4;46:15;47:4;49:25;50:3; 55:19,25;60:20,23;66:2,6,9; 69:5,9;71:4,7,10,13;75:19,22; 76:1,15,20;82:11,15</p> <p>vertical (1) 80:15</p> <p>via (1) 54:2</p> <p>videoconferencing (1) 52:2</p> <p>view (1) 64:12</p> <p>violation (6) 21:22,24,25;22:1,5;29:14</p> <p>violations (1) 38:20</p> <p>visit (2) 22:9;82:6</p> <p>visiting (2) 3:22;35:13</p> <p>voiced (1) 22:21</p> <p>volume (2) 75:6;80:13</p> <p>volumes (2) 80:13;81:2</p> <p>voyage (1) 55:8</p>	<p>17:23;72:12,13</p> <p>weight (9) 30:6;57:8;70:21;73:1,7,13, 19;75:4;79:4</p> <p>weights (1) 72:12</p> <p>welcome (2) 2:2;34:12</p> <p>welcomed (1) 77:24</p> <p>well-maintained (1) 29:25</p> <p>weren't (5) 31:5;32:5,5;77:6;84:1</p> <p>what's (2) 12:20;13:2</p> <p>whereof (1) 85:13</p> <p>whole (1) 70:8</p> <p>whose (1) 38:19</p> <p>William (1) 4:20</p> <p>willing (4) 33:3;52:22,25;56:8</p> <p>willingness (1) 83:21</p> <p>wish (3) 5:12;45:22;52:13</p> <p>within (8) 6:2;11:12;19:21;25:3;60:3; 69:12;79:9;80:9</p> <p>without (3) 66:24;69:25;74:12</p> <p>witness (1) 85:13</p> <p>wonderful (3) 51:23;53:20;54:23</p> <p>wondering (4) 12:19,19;21:14;59:12</p> <p>word (1) 29:18</p> <p>worded (1) 13:13</p> <p>wording (2) 19:19;25:1</p> <p>words (5) 19:21;21:16;54:14;69:19; 72:4</p> <p>word's (1) 9:8</p> <p>work (8) 9:24;22:6;39:21;51:21,24; 52:23;53:13,24</p> <p>worked (2) 53:10;54:22</p> <p>working (7) 9:6;11:19;20:22;27:16; 37:18;51:10;54:13</p> <p>works (5) 16:25;21:13;26:2;53:15;72:9</p> <p>write (3)</p>	<p>69:18;73:20;74:3</p> <p>writing (5) 37:20;39:7;69:18,20;74:25</p> <p>written (5) 12:4;26:18;31:9;37:11;69:22</p> <p>wrong (2) 28:17;29:3</p>
V	W		Y
<p>valid (3) 28:23;29:8,9</p> <p>various (1) 54:4</p> <p>vast (1) 53:5</p> <p>vehicle (22) 4:23;7:4,16;8:6;23:22;38:10; 43:6;57:6,11,12,13;58:11; 69:24;70:19,21;72:8,19;73:25; 74:8,9,10;81:3</p> <p>vehicles (29)</p>	<p>wait (2) 9:9;49:4</p> <p>waiting (2) 48:24;49:11</p> <p>watch (1) 83:4</p> <p>watching (1) 31:20</p> <p>way (8) 9:25;13:13;16:22;51:17; 52:1;53:14;64:16;76:6</p> <p>ways (1) 26:12</p> <p>weak (1) 79:3</p> <p>weather (2) 78:21,23</p> <p>website (2) 3:23;7:6</p> <p>week (3) 25:4;27:14;78:19</p> <p>weeks (1) 6:1</p> <p>weigh (3)</p>	<p>wish (3) 5:12;45:22;52:13</p> <p>within (8) 6:2;11:12;19:21;25:3;60:3; 69:12;79:9;80:9</p> <p>without (3) 66:24;69:25;74:12</p> <p>witness (1) 85:13</p> <p>wonderful (3) 51:23;53:20;54:23</p> <p>wondering (4) 12:19,19;21:14;59:12</p> <p>word (1) 29:18</p> <p>worded (1) 13:13</p> <p>wording (2) 19:19;25:1</p> <p>words (5) 19:21;21:16;54:14;69:19; 72:4</p> <p>word's (1) 9:8</p> <p>work (8) 9:24;22:6;39:21;51:21,24; 52:23;53:13,24</p> <p>worked (2) 53:10;54:22</p> <p>working (7) 9:6;11:19;20:22;27:16; 37:18;51:10;54:13</p> <p>works (5) 16:25;21:13;26:2;53:15;72:9</p> <p>write (3)</p>	<p style="text-align: center;">0</p> <p>02 (1) 52:7</p> <p>03 (1) 20:21</p> <p>050 (1) 12:17</p>
V			1
			<p>1 (18) 7:23;10:22;11:2;32:15; 35:25,25;40:8,9,14;45:7;47:15; 49:22,24;50:6,11;73:24;76:25; 83:14</p> <p>1:00 (2) 33:25;34:1</p> <p>10 (2) 7:1;33:25</p> <p>10,000 (2) 73:1,24</p> <p>100-01 (1) 29:2</p> <p>105 (1) 57:6</p> <p>105.5 (8) 22:22;56:15;57:25;59:17; 63:5;69:15;70:2;73:4</p> <p>11 (2) 7:1;42:13</p> <p>12 (13) 3:14;7:2;8:2,22;13:15;23:11, 12;24:5,9,9;33:25;35:4;41:1</p> <p>12,000-plus (1) 51:12</p> <p>12:00 (1) 4:9</p> <p>1261 (2) 7:17;18:19</p> <p>129 (2) 69:15;75:2</p> <p>129,000 (8) 56:15;57:7;70:5,14;72:25;</p>

<p>78:11;79:24;80:11 129,000-pound (7) 3:16;23:14;35:5;69:24;72:8; 78:3;81:18 129K (3) 6:24;8:13,14 13 (2) 7:2;13:10 14 (1) 7:3 140 (1) 9:9 144,000 (1) 72:21 144,000-pound (1) 75:2 15 (11) 3:16;7:3;20:1,1,5;24:3;28:5, 6,10;35:5;72:14 150,000 (1) 72:21 16 (1) 7:3 160 (1) 73:25 16th (1) 3:7 17 (8) 2:22,25;5:15;6:7,7;7:4,10,15 18 (1) 63:21 1986 (1) 51:17</p>	<p style="text-align: center;">3</p> <p>3 (9) 3:12;6:21;7:24;8:18;35:2; 56:13,18,23;62:24 30 (2) 57:19;72:16 300 (1) 18:8 300-plus (1) 6:2 380 (10) 20:21;21:5;43:2,6;64:1,3,15; 65:7,12,13 386 (1) 38:17 39 (3) 3:12;35:2,2 39.03.06 (2) 7:14;18:7 39.03.12 (5) 7:21;12:16;19:12;20:8;41:1 39.03.15 (2) 8:12;24:20 39.03.15.12 (1) 51:1 39.03.22 (1) 8:16 39.03.23 (4) 8:20;22:25;23:2;28:15 396.17 (1) 8:3 396.19 (1) 8:4 396.25 (1) 8:4</p>	<p style="text-align: center;">6</p> <p>6 (15) 3:12;6:23;15:18;33:12;35:2; 36:23;46:9;48:10;49:23;50:1; 77:1,8;82:9,10;83:17 67-2901B (1) 13:9 6th (1) 85:14</p>
<p style="text-align: center;">2</p>	<p style="text-align: center;">4</p>	<p style="text-align: center;">7</p>
<p>2 (9) 6:19;15:1,1;32:20;36:7,8; 45:13,14;47:19 20 (4) 9:8;58:17;73:21,24 200 (1) 26:23 2004 (1) 20:24 2016 (1) 85:14 2018 (1) 85:24 21 (2) 8:6;63:20 22 (5) 3:17;28:16,18,19;35:7 23 (11) 3:19;23:5;28:16,17,21;31:17, 23;35:8;37:24;39:16;85:24 25 (2) 51:11;63:17 2636 (1) 85:21 289 (1) 26:22</p>	<p>4 (14) 6:22;7:25;8:18;15:5,6,11; 32:25;33:1;36:14;45:19;47:23; 62:25;63:11;65:4 4,000 (1) 72:19 49 (2) 8:3;20:20 49-1001 (2) 70:13,22</p> <p style="text-align: center;">5</p> <p>5 (13) 6:22;8:15;13:5,25;15:12; 33:6,9;36:19;45:25;48:3;56:22; 66:12;69:12 5,000 (2) 73:5;75:5 50 (2) 13:25;57:8</p>	<p style="text-align: center;">8</p> <p>8 (1) 6:24 80 (1) 51:14 80,000 (1) 57:7 80,000-pound (2) 72:18;73:25 83701-2636 (1) 85:22 87 (1) 29:23 8th (7) 3:1;4:2;11:20;35:18;37:12; 42:20;44:25</p> <p style="text-align: center;">9</p> <p>9 (1) 6:25 9,000 (2) 72:9;75:6</p>