

ITD's Permitted Truck Negotiated Rulemaking **Comments on Draft Rules**

Below is a listing of the comments submitted. To review the comments, please go to the listed page numbers. Thank you!

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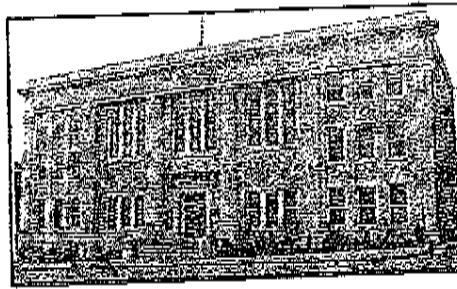
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PAGE 01/01

Board of
County Commissioners
245-2234

Clerk District Court
Auditor and Recorder
245-3212

Treasurer and
Tax Collector
245-2421



County of Benewah
701 W. College Avenue
St. Maries, Idaho 83861

Prosecuting Attorney
245-2564

Assessor
245-2821

Sheriff
245-2555

Coroner
245-2611

June 27, 2016

Idaho Transportation Dept.
600 W. Prairie Avenue
Coeur d'Alene, Idaho 83814

Re: Draft Rule 39.03.15

Dear Ramon Hobdey-Sanchez:

Benewah County is strongly opposed to all existing and pending 129,000-pound truck routes located in northern Idaho.


A large number of Idaho roads are in poor to mediocre condition and do not possess the proper widths, passing lanes, turnouts and safety ramps necessary for trucks carrying 129,000 pound loads. The routes that do contain safety ramps are not equipped to handle the excess weight.

Adding to that, inclement weather and winding roadways create unsafe conditions for everyone.

Longer, heavier trucks will lead to more congestion on our highways and put increased stress on our roads and bridges and it is unfair to hold taxpayers responsible for paying for infrastructure damage caused by the heavier trucks.

Respectfully,

BOARD OF COUNTY COMMISSIONERS


By: Deanna Bramblett, Clerk



June 29, 2016

7155 W. Denton St.
Boise, ID 83704

Stephen Bywater
Bywater Law office

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department

RE: Idaho Negotiated Rulemaking for Overlegal Permitting and Safety requirements

Dear Mr. Bywater and Mr. Hobdey-Sánchez;

This letter is in response to the most recent reference to draft rules as part of the negotiated rulemaking process. Given the extensive range and volume of responses from stakeholders on this issue of significance to all Idahoans, AAA is concerned that the end-game result is a handful of minor rules changes that miss the mark. Our observation is that the process has overlooked issues of substance to concentrate largely on serving the economic and ease-of-use considerations for the industry.

AAA is grateful for the opportunity to weigh in on a range of recommendations related to three perspectives: **trucks, drivers and Idaho roads**. In fact, some of those concerns were identified in the list of 17 concepts by ITD. Unfortunately, ITD's proposed rules changes do not substantively incorporate the safety recommendations AAA identified in its May 18 letter.

AAA took its cues from Governor Otter in his March 21, 2016 letter to ITD Board Chairman Jerry Whitehead: ***"Our goal must be making our highways safer for all motorists by insisting that all trucks, of every weight and classification are configured, maintained, and driven in ways that maximize safety."***

Our organization concludes the results of a process that—on face value—encouraged broad public input, only minimally addressed the concerns of invited stakeholders. AAA also opines that the permitting process and the rules by which it operates register as a 'disconnect' to Idahoans because of the confusing relationship involving ITD, ISP, the Ports of Entry and federal regulatory authority designed to make it work. There appears to be no unified, seamless approach to identify weak links and to address them. In addition, the rules under consideration appear to be based on conclusions made by the Department before the process began.

To its credit, ITD's rulemaking process did identify the need for carriers and drivers to be pre-certified to legally operate in Idaho, ostensibly to address safety concerns—and perhaps to limit the potential liabilities the state could face in a catastrophic event. But even that discussion

Continued

and the remarks contained in the 17 concepts document appear to **deflect positions of substance, particularly from the vantage of point of the shared responsibility of permittees, regulators and enforcement officials.** From the 30,000-foot level, AAA believes it makes more sense to identify problems and to fix them than to pretend they are someone else's problem.

This disconnect is no more apparent than the way Idaho responds to the reports regarding truck enforcement. Consider the topic of roadside and law enforcement inspections included in the FMCSA report AAA submitted previously. Among roadside inspections for calendar year 2015, nearly 11 percent of the 8,753 driver inspections resulted in Out of Service designations. That same year, among 6,257 vehicle inspections in Idaho the OOS violations totaled 1,639, representing more than 26% of all inspections.

Failure rates of 11 percent and 26 percent should be cause for concern. Clearly, OOS violations are pervasive. Going forward, opening thousands of miles of new Idaho routes where 129,000 lb. trucks will be eligible to travel should raise a red flag.

Here is a brief synopsis from AAA on the IDAPA rules that ITD has submitted:

IDAPA 39.03.06 – Presumably, the purpose is to update language as a result of the 2016 passage of S 1261 for stinger-steered automobile transporters. This rule does not address motorist safety.

IDAPA 39.03.12 – By rule, changes will identify safety inspection requirements for oversize vehicles and/or loads, under the headings of inspections, inspectors, drivers, motor carriers, exemptions. AAA agrees with taking the action to more clearly articulate this process, though the substance and benefit may be minimal, since these elements are part of existing federal requirements.

IDAPA 39.03.15 – Extends the scope of excess weight permits. This rule adds 'permissive' language for ITD to issue permits on local highways, even though it identifies an exception "as otherwise restricted by Idaho statute . . ." AAA is concerned that 'permissive' language opens the door for the state to extend its influence on local roads, perhaps to exercise what it considers its prevailing interest. Language does not address motorist safety.

IDAPA 39.03.22 – This rule makes note of the requirement for trucks seeking overlegal permits to be equipped with brakes that meet Federal Motor Vehicle Safety Standards No. 121. This is minor house-keeping that actually may be viewed as protecting carriers from having to update to newer, more efficient brake systems, like ABS, as recommended by AAA. This language does not address motorist safety.

Language in this rule also identifies drivers and a requirement for special training to operate LCVs. AAA supports inclusion of the language, though it's already a federal requirement. In addition, as noted in the ITD discussion in the 'concepts' document that any driver with a CDL can take a written test to receive a double or triples endorsement. There is no substantial improvement to motorist safety.

Continued

IDAPA 39.03.23 – This rule addresses revocation of overlegal permits with addition of language to disqualify a vehicle for a carrier's violation of Out-of-Service order by FMCSA. AAA agrees this language should be included. At minimum, this attempt is useful because it identifies carriers and limits access to overlegal permits. This rule marginally addresses motorist safety.

To summarize, AAA believes the substantive recommendations from stakeholders on the topics of roads, drivers and trucks are largely overlooked and discounted in the rulemaking process. As ITD notes in its observations, some of these topics may best be addressed by legislative action.

However, on the issue of roads alone, ITD appears to have adopted an unsympathetic position relative to any arguments that challenge its authority to select the routes for bigger, heavier trucks. Suitability of routes should also rely on specific considerations like line of sight, crash rates, moving violations, the grade of the road, power to drive axles, geography and a host of other factors.

As we have said previously, reputable carriers who follow the rules are not the problem. The state must address the very real considerations that result from operators and carriers who break the rules.

Thank you for your consideration of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Carlson", with a stylized flourish at the end.

Dave Carlson
Director of Public & Government Affairs
AAA Idaho
208-658-4401

cc: Governor Otter, Bert Brackett, Joe Palmer



June 29, 2016

Stephen Bywater
Over Legal Truck Permit Rule Coordinator
Idaho Transportation Department
3311 West State Street
Boise, Idaho 83704

Dear Mr. Bywater:

The Association of Idaho Cities, Idaho Association of Counties, and Idaho Association of Highway Districts are nonprofit, nonpartisan member support organizations representing Idaho's 289 local governments with primary jurisdiction over Idaho's local street and highway system. We write to you to express our concern about proposed changes to IDAPA Rule 39.03.15 regarding excess weight permits for reducible loads, also known as the Over Legal Truck Permit Rule. Specifically, we are concerned about language in 39.03.15.001.02 granting ITD authority to permit trucks to operate on local highways.

We believe that ITD lacks the statutory authority to issue permits for over legal trucks on local highways without the consent of the respective local highway jurisdiction. Section 49-1004, Idaho Code, requires over legal truck permit applications to be submitted "...to the board or other proper authorities in charge of or having jurisdiction over a highway..." Cities, counties, and highway districts have exclusive jurisdiction over the local streets and highways. ITD only has legal authority over local streets and highways, when said authority is delegated by the respective local jurisdictions. We believe that local highway jurisdictions must first authorize ITD to locally permit over legal trucks in order for ITD to permit over legal trucks to operate on the local highway system.

Our associations are committed to working with ITD to achieve the goal of establishing an effective permitting process, and applaud ITD in its desire to move forward towards this concept. Although our associations support a "one-stop-shop" process for issuing over legal truck permits, our associations would like to propose moving towards that concept through a series of joint powers agreements with local jurisdictions. The joint powers agreements can set up procedures through which ITD can efficiently and quickly issue permits on behalf of local jurisdictions unless local jurisdictions refuse within a specified amount of time. We are confident that the gains to both industry and local jurisdictions will be such that refusal to sign a reasonable joint powers agreement will only hurt the local jurisdictions at their own expense.



We stand available to offer direct staff support and to coordinate efforts between the jurisdictions our organizations represent and ITD to draft and introduce any joint agreements, rules or legislation that achieves our collective goals of improving the over legal truck permitting process in Idaho.

We appreciate ITD staff working in such a collaborative manner to accommodate our concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "S. Grigg".

Seth Grigg
Executive Director
Association of Idaho Cities

A handwritten signature in black ink, appearing to read "Daniel M. Chadwick".

Daniel Chadwick
Executive Director
Idaho Association of Counties

A handwritten signature in black ink, appearing to read "Stuart Davis".

Stuart Davis
Executive Director
Idaho Association of
Highway Districts

10589 S. HIGHWAY 95
P. O. BOX 671
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TOLL FREE (800) 632-8743
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E-MAIL: alc@idahologgers.com

July 8, 2016

Steve Bywater
Consultant to Idaho Transportation Department

and

Ramón Hobdey-Sánchez, Program Specialist
Governmental Affairs
Idaho Transportation Department
P.O. Box 7129
Boise, ID 83707-1129

Dear Mr. Bywater and Mr. Hobdey- Sánchez,

The Associated Logging Contractors, Inc. (ALC) is submitting these comments on the draft proposed rules the Idaho Transportation Board issued on June 16, 2016 as follows:

- 39.03.06 – Deals with allowable length and overhang.
- 39.03.12 – Deals with inspections and brake requirements.
- 39.03.15 – Deals with 129K harmonization on the Interstates and truck permitting.
- 39.03.22 – Deals with brake requirements and driver training.
- 39.03.23 – Deals with revocation of permits due to an Out-of-Service order by FMCSA.

The ALC participated in the “2nd negotiated rulemaking meeting” on Wednesday, June 29th, 2016.

The ALC appreciates the Idaho Transportation Board and the Idaho Transportation Department (ITD) for working towards addressing Gov. Otter’s written direction and subsequent ITD goals “to receive public feedback and comments regarding potential improvements to the permitting process and/or safety requirements for vehicles and/or loads that are required to operate under an overlegal permit. There will be a focus on potential improvements to the permitting process, safety requirements, regional harmonization and customer service.”

However, the ALC believes that the ‘negotiated rules process’ and the draft proposed rules to date are lacking and notes specific reasons for that assessment as follows.

Comments on the ‘negotiated rules process’: It is the ALC’s observation that unless the June 29th ‘negotiated rulemaking process’ meeting was attended by ‘stakeholders’ that traveled to or lived in the Boise area and participated in person, that the opportunity for participation in a productive and

meaningful way was not accorded to either 'stakeholders' or the general public. To our knowledge no public notices in local newspapers were published and trucking companies or CDL holders were not contacted directly to publicize the meeting and the opportunity for participation in this 'negotiated process' unless they were aware of this process and had been added to the 'stakeholders' email list(s).

Further, it appears that two different email lists of 'stakeholders' was used and some stakeholders did not directly receive the email notice alerting potential participants that the meeting time on the 29th had changed AND the ability to call in or use WebEx to participate was eliminated. 30 members of the ALC who had received the initial notice (by way of a mailing by the ALC) of the 4 ways to participate in the meeting - go to Boise, call in, WebEx in or attend via video conferencing at a regional ITD office – did not receive notice of the changes as the ALC did not see the notification email until 24 hours before the meeting.

Additionally, the ALC identified the point person for the ALC as their governmental affairs consultant Jerry Deckard at CapitolWest Public Policy Group, and initially neither contact list had his email address listed.

While the ALC does not believe this miscommunication was intentional, the ALC has concerns about the process to date and whether all stakeholders have truly been given an opportunity to meaningfully participate.

As this process moves forward, the ALC asks that public notice be given as is traditionally done in state rule making. Further, the ALC asks that Jerry Deckard, CapitolWest Public Policy Group be added to the 'official stakeholder list' to receive all meeting and proposed rules. Jerry's email address is: jerry@capitolwest.us and his mailing address is: P.O. Box 953, Boise, Idaho 83701 with a copy to the ALC's President, Steve Sherich, who can be reached via this email address: linda@idahologgers.com

Comments on the draft proposed rules issued on June 16, 2016: In its letter of May 13th, 2016 the ALC submitted a list of 11 different items of concern to the ALC and its members to be used as a starting point for addressing the stated goals of the Governor and ITD regarding potential improvement for safety for hauling and haul routes for 'overlegal' trucks. Those 11 points are listed here for review.

1. Sight Distance on Roads
All roads meeting criteria to haul 129GVW must have a minimum sight distance of 400 feet at 60 mph or 200 feet at 30mph. This is based on stopping distance for loaded trucks on dry pavement.
2. Minimum shoulder width on roads for 129GVW travel should be 2 feet. The shoulder can be paved or hard pack surface so as not to give way if used within a margin of error to avoid obstacles.
3. Passing lanes required for 129GVW routes for any grade at 5% or greater and 2 miles in length or longer. Passing lanes should be a minimum of 400 feet. Grades exceeding 2 miles should have a passing lane for each 2-mile segment.
4. Runaway truck escape ramps should be provided on any 129 GVW route at grades of 5% or greater and 2 miles long or longer.
5. Chain up and Chain down pull off areas with safe distances available.
6. Reader boards provided in potentially hazardous weather conditions warning drivers to stop travel.
7. Minimum experience for 129GVW drivers should be required. 2 years experience in pulling doubles as well as a minimum age of 25 years.

8. A Forward collision avoidance system.
9. A lane departure warning system.
10. Electronic stability control system.
11. A maximum speed of 65 mph.

It appears to the ALC that items numbered 1,2,3,4,5,6,8,9,10 and 11 were dismissed by the ITD Board and ITD staff as either unnecessary or unworthy of discussion in this process as none of these are addressed in the draft of the proposed rules released on June 16, 2016. The ALC is disappointed by this and will continue to seek meaningful discussion and resolution of these safety items.

It appears to the ALC that item number 7 may have been partially addressed in proposed rule 39.03.12.050.03 with the possible adoption of 49 CFR Part 380 although that is not clear to the ALC at this time. The ALC will research this proposal in more depth and submit further comments – either supporting or opposed – in the rules process as it moves forward.

The ALC continues to believe that added experience is needed for truck drivers who are to operate trucks at the 129 GVW level.

Comments specific to the proposed draft rules: The ALC offers the following specific comments.

- 39.03.06 – Deals with allowable length and overhang. *As this deletes a rule whose contents are already in statute the ALC supports this rule at this time.*
- 39.03.12 – Deals with inspections and brake requirements. *The ALC is researching this proposed rule to determine if it addresses any of the concerns originally outlined and to what degree it may do so. The ALC will have further comments during the ongoing rulemaking process on this item.*
- 39.03.15 – Deals with 129K harmonization on the Interstates and truck permitting. *The ALC shares the concerns expressed by local jurisdictions on this proposal and encourages ITD and the ITD Board to drop this draft rule from consideration and initiate more meaningful discussions with local jurisdictions to address concerns.*
- 39.03.22 – Deals with brake requirements and driver training. *The ALC is researching this proposed draft rule but at present it does not appear to address the concerns originally expressed by the ALC. The ALC will have further comments during the ongoing rulemaking process on this item.*
- 39.03.23 – Deals with revocation of permits due to an Out-of-Service order by FMCSA. *The ALC expresses similar concerns that were stated by a representative of the organization 'Right Truck for Idaho' who asked for clarification on whether this rule would apply to Out-of-Service orders issued by ISP or ITD or to those issued by FMSCA. The ALC looks forward to reviewing any changes that ITD indicated may be in the works as a result of this discussion at the Boise meeting June 29th. The ALC will have further comments during the ongoing rulemaking process on this item.*


As noted previously, the Associated Logging Contractors, Inc. is a non-profit trade association in Idaho that has 435 regular business members **about 1/3 of whom are logging and wood products haulers.**

Many of the remaining 2/3 also own and operate trucks. All of the ALC's members live and work in Idaho.

We look forward to continuing conversations to ensure safety in all geographic areas of Idaho. As the conditions are quite variable throughout the State, each circumstance is different when considering extra heavy truck routes.

We again express our appreciation to the ITD Board and ITD staff for launching this effort and appreciate that the Idaho State Police appears to be actively participating! We **all** share the goal of maintaining safe and efficient transportation systems throughout Idaho.

Respectfully submitted,



Steve Sherich, President

Associated Logging Contractors, Inc.
Owner, Sherich Logging

Please send email regarding this rulemaking to Steve Sherich via this email address – linda@idahologgers.com and include ALC's Governmental Affairs Consultant Jerry Deckard at jerry@capitolwest.us Thank you!

cc: The Honorable C.L. 'Butch' Otter, Governor of Idaho

The Honorable Senator Bert Brackett, Chairman, Senate Transportation Committee

The Honorable Representative Joe Palmer, Chairman, House Transportation & Defense Committee

Jerry Deckard, CapitolWest Public Policy

July 6, 2016

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 West State Street
P.O. Box 7129
Boise, Idaho 83707-1129

RE: Proposed Rules on Over-legal Permitting

Dear Mr. Hobdey-Sánchez:

Thank you for the opportunity for Simplot Transportation to comment on the state's efforts to implement Senate Bill 1229, which allows Idaho to permit vehicles up to 129,000 pounds on the Interstate system.

We support the proposed rules as they are currently drafted. The trucking industry is among the safest and most highly regulated in the country, with mandates to ensure that companies hire and retain safe and conscientious drivers and meet equipment maintenance guidelines. Trucking companies, including Simplot Transportation, will continue to operate safely and effectively at all weight levels.

Again, thank you for the opportunity to comment on the Idaho Transportation Department's negotiated rulemaking on over-legal permits on the Interstate. If you need to contact me, please call 208-780-5724 or e-mail bill.moad@simplot.com.

Sincerely,



Bill Moad
Director Fleet Operations
Simplot Transportation



Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
E: Ramon.Hobdey-Sanchez@itd.idaho.gov

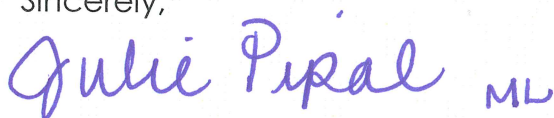
Dear Ramón . Hobdey-Sánchez,

Thank you for the opportunity to comment on the Idaho Transportation Department's proposed amendments to several rules governing permitting of commercial vehicles. The Idaho Trucking Association (ITA) generally supports the department's efforts to harmonize our rules with surrounding states and to promote safety through the permitting process. We also support overall efforts to streamline the permitting process with local jurisdictions.

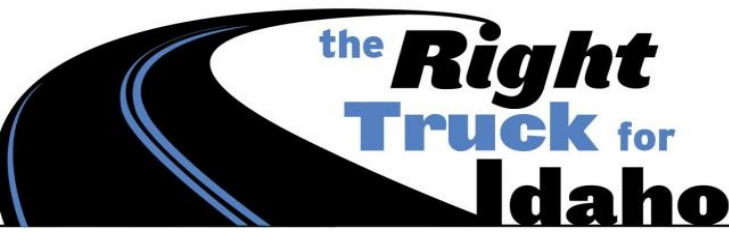
ITA does not have any issues with the rule changes as proposed. However, the language regarding a Federal Motor Carrier Safety Administration Out-of-Service Order is not clear in 39.03.23.100.01(d). We would prefer that the language clearly state that d. The motor carrier has violated a Federal Out-of-Service order pursuant to 49 CFR 386 issued by the Federal Motor Carrier Safety Administration.

As it is our highest priority, we appreciate the emphasis the department has placed on safety in this process. Again, thank you for this opportunity.

Sincerely,

A handwritten signature in blue ink that reads 'Julie Pipal' followed by the initials 'ML'.

Julie Pipal
President/CEO
C 208.870.4911



Right for Idaho's Economy
Right for Idaho's Road Safety
Right for Idaho's Environment

Idaho Transportation Department
3311 W. State St.
P.O. Box 7129
Boise, ID 83707-1129

July 8, 2016

Mr. Ramon Hobdey-Sanchez,

Thank you once again for the opportunity to provide comment on the draft rules published by the Idaho Transportation Department (ITD) during this negotiated rulemaking process. As requested by the Governor, ITD kept the rulemaking "public, transparent and inclusive" and tailored to the operations and implementation of permitting trucks 80,000 pounds and higher. We appreciate the openness and expediency ITD has shown in sharing critical information to stakeholders.

We understand the ITD is considering revising the proposed rule 39.03.23 to clarify that the motor carrier has violated an Out-of-Service order by the Federal Motor Carrier Safety Administration as described in Part 386 (386.73) of the Federal Motor Carrier Safety Regulations. We are supportive of this language and it would address the concerns we have previously registered about this section of the draft rule.

Additionally, in proposed rule 39.03.15, we appreciate the Department wanting to centralize the permitting process for vehicles over 80,000 pounds while being sensitive to local jurisdictions who want to participate in the process.

Finally, in proposed rule 39.03.12, we believe the department should include the enforcement of 49 CFR 380 as part of its permitting process on Long Combination Vehicles (LCVs). By adopting this regulation by reference, the department will be ensuring consistency in permitting vehicles engaged in interstate commerce, and who may operate those LCVs. The department should not, however, go beyond the scope of the federal rule because no Idaho law currently addresses this issue.



Right for Idaho's Economy
Right for Idaho's Road Safety
Right for Idaho's Environment

Once again, thank you for your efforts in conducting a fair and expedient rulemaking process. It has been a pleasure working on this issue with you.

Sincerely,

THE RIGHT TRUCK FOR IDAHO COALITION

Arlo G Lott Trucking
Milk Producers of Idaho
Idaho Trucking Association
Food Producers of Idaho
Idaho Forest Group
Transystems LLC
Glanbia Foods
Idaho Sugar Beet Growers
Association

Associated Food Stores
Idaho Grower Shippers Association
Idaho Farm Bureau Federation
Winco
The Amalgamated Sugar Company
NW Dairy Association
Darigold
Idaho Cattle Association

Monsanto
US Ecology Inc.
Scoular Company
Idaho Grain Producers
Idaho Oregon Fruit and Vegetable
Association
Northwest Grocery Association
Idaho Dairymen's Association

From: WALLY BURCHAK <wallykbc1@gmail.com>

Date: Fri, Jul 8, 2016 at 3:22 PM

Subject: KBC Comments on Brakes

To: alan.frew@itd.idaho.gov

Alan,

It was good to see you last week at meeting in Boise. As I told you, I am concerned about making comments publicly because they are often misrepresented by other parties.

Rule 39.03.12 Section 060. BRAKES - states that brakes shall meet FMVSS No. 121 in affect at time vehicle is manufactured. All of the applications to haul 129K on Hwy 95 have promised ABS brakes on all axles. The public is being sold that ABS brakes will be used on 129K loads, but these rules do not guarantee that. There is nothing in these rules to prevent a transportation company from taking a pre 1996 vintage trailer throw some extra axles underneath and haul 129K. Also there is fear by many in the trucking industry that owner operators will try to operate pre-electronic engines (1995 manufacturing date or older) because they will be exempt from new electronic log book rules. These trucks will have neither ABS brakes or automatic slack adjusters. I believe any new safety rules should specifically identify minimum brake standards. I believe the minimum brake standards for 129K should be ABS brakes with automatic slack adjusters.

I also disagree with Idaho rules that allow 18 year old drivers to hold a Class A CDL and pull LCV Vehicles. Major Reese has stated that the Federal Rules require a minimum age of 21 years old to hold a CDL. We do not allow 18 year olds to purchase or consume alcohol because we do not trust their judgment or their actions, but yet we are willing to put them behind the wheel of a truck hauling 129K. This does not make any sense. Interstate carriers like our Company cannot insure any drivers under 21 years old. So allowing Intrastate Carriers to have 18 year old drivers creates both a safety issue and an un-level playing field with Interstate Carriers that must meet Federal Rules. Idaho minimum age for CDL Drivers should mirror Federal Rules.

Thank you for taking the time to answer my questions last week and to consider these comments.

Wally Burchak