

Transcript of public hearing for rulemaking activity on Chapter 308-100 WAC: Drivers' Licenses – Special Provisions

November 21, 2023

Ellis Starrett:

Good morning. This is a public hearing before the Washington State Department of Licensing, being held to elicit public testimony, both oral and written, with regard to proposed rules amending Chapter 308-100 WAC. These proposed rules amend current definitions related to CDL holders to decrease regulatory barriers to obtaining a CDL per repetition from the Washington Trucking Association, as well as implementation pursuant to HB 1058 passed during the 2023 legislative session.

These proposed rule changes include amendments to WAC 308-100-005 definitions, WAC 308-100-020 commercial driver's license eligibility, WAC 308-100-034 demonstrated proficiency, WAC 308-100-035 employer certification, WAC 308-100-040 examination requirements for commercial driver's licenses, WAC 308-100-050 examination fees, WAC 308-100-130 serious traffic violations, WAC 308-100-180 third party testing fees, and a new section, WAC 308-100-045 reinstatement of a CDL after disqualification, cancellation, expiration, revocation, surrender, suspension or transfer.

This hearing is being held via Zoom and in person at 1125 Washington Street Southeast, Olympia, Washington. This hearing is taking place at 10:00 AM on November 21st, 2023. Public notice of this hearing was given by notice number WSR 23-21-101, filed with the Code Reviser's Office on October 18th, 2023. The department posts all of our rulemaking information on dol.wa.gov/about/rulemaking-activity. And this is where you can access all rulemaking notices and proposed language for this rulemaking. The sign-in sheet, your testimony and any documents you provide are public documents.

This rule is proposed pursuant to the provisions of RCW 4601110 and HB 1058. My name is Ellis Starrett, and my title is Rules and Policy Manager. The director of licensing has designated me to preside over this hearing. Representatives of the Washington State Department of Licensing are present today if there are questions. Tandy Alexander, Commercial Driver's Assistant Administrator, Dan Cook, Licensing Endorsements and Traffic Safety Administrator, LaRay Ellie, Management Analyst 5, Ron Latham, Project Manager, Linda Nesland, Management Analyst 5, Colton Meyers, Policy and Legislative Analyst, Jeff Snowden, Management Analyst, Kelsey Stone, Policy and Legislative Analyst, James Manuel, Tribal and Federal Liaison, Sky Ru, Assistant Director, and others maybe.

The procedure today will be as follows. The department is required to make a record of this hearing by stenographic, mechanical or electronic means. Therefore, we are audio recording this hearing. For virtual attendees wishing to testify, please provide your name and contact information in the chat, or tell me and unmute yourself, and let me know you are willing to testify. For those in the room wishing to testify who have not already noted their desire to testify on the sign-in sheet, please wait for me to ask the room if there is anyone else willing to testify and notify me at that time. I will ask you to provide your contact information which will be added to the sign-in sheet. This sign-in sheet will be used to call forward individuals for testimony and is later used to ensure hearing participants are notified of rulemaking results and the agency's response to comments. You'll be called to testify in the order in which I collect your information.

To assist in preparing the record of this public hearing, individuals testifying today should state their name, who they represent if they're testifying on behalf of others, and whether they support or oppose the proposed rules. The department has received written comments on these proposed rules. For those wishing to provide written comments, please hand them to someone in the room or email them to rulescoordinator@dol.wa.gov and we will include them in the formal record and our response to questions. Copies of these written comments will be added to the rulemaking file. Now, we will hear oral statements from those present.

Heather Fathali.

Heather Fathali:

Hi there, can you hear me?

Ellis Starrett:

Yes.

Heather Fathali:

Okay. Thank you so much for your time today. Today, I did submit a public comment in writing but I'm appearing on behalf of my client. My name is Heather Fathali. I'm a Immigration Attorney with Cascadia Cross-Border Law in Bellingham, Washington, and I represent an individual named Mr. James Michael Jack. And I would like to read my written comment into the hearing today on his behalf.

I make this public comment on behalf of my client, Mr. James Michael Jack to urge the Department of Licensing to adopt the proposed new WAC 308-100-045, and also to amend the language at WAC 308-100-020, to allow for a green card or its equivalent as proof of lawful permanent residence status. Mr. Jack lost his CDL in 2018 when seeking renewal because he did not hold a physical green card, despite the fact that he held lawful permanent residence status. Had alternative documentary proof of lawful permanent residence status and acceptable, he could have avoided losing his CDL. An amendment to WAC 308-100-020 could allow for this, and I urge the agency to amend the language accordingly.

Furthermore, under current DOL policy, because Mr. Jack has now been without a CDL for one year or more, he is required to complete the required training, pass all required knowledge tests, obtain a CLP, and pass all required skills tests to be issued a CDL. Meeting these requirements, particularly the requirement to complete the required training is unduly burdensome on Mr. Jack. The adoption of the proposed new language at WAC 308-100-045 will help my client resolve some of the significant roadblocks he has experienced in regaining his CDL.

I provide a history of his circumstances for context. Mr. Jack is a Canadian citizen, a lawful permanent resident of the US, a resident of Washington, and a longtime Washington State CDL holder. Notably, he's also an American Indian born in Canada. Rooted in the Jay Treaty of 1794 and now codified at Section 289 of the Immigration and Nationality Act, this is a unique status with special rights and privileges that do not apply to regular lawful permanent residents. Section 289 grants Canadians with a 50% or greater American Indian bloodline, defined by the statute as American Indians born in Canada, privileges unparalleled by all but US citizens, virtually unrestricted by US immigration laws.

Individuals holding this status who reside in the US are regarded as lawful permanent residents of the US as a matter of law. This is inherent in their status. Thus, under Section 289, Mr. Jack is permitted to reside and work anywhere in the US and is not required to hold a permanent resident card or green card in order to do so. Mr. Jack is 59 years old and has resided in Washington State as an American Indian born in Canada since infancy. He has worked as a commercial truck driver based on his Washington state CDL since 1992, and has always held a US Social Security card.

Upon seeking renewal of his CDL in 2018, he was told he must either present proof of US citizenship or a green card, or his CDL would not be renewed. As stated, US law does not require that Mr. Jack hold a green card as proof that he's a lawful permanent resident. His status is recognized as a matter of law. At the time, Mr. Jack was unsure how to obtain a green card since this wasn't something that was ever required of him and he never needed it before. He began contacting different organizations that he thought might be able to assist, exhausting all avenues known to him. In the meantime, he needed a regular driver's license to get by in his daily life. In order for him to obtain this, he was required to sign a document pertaining to the abandonment of his CDL. Mr. Jack never had the intent to abandon his CDL as this was his only source of income.

He struggled with this for over a year, and then Covid hit, making the process even more difficult. In early 2022, he was referred to my office, and for several months we worked with the government of Canada and tribal authorities to obtain relevant documentation pertaining to his status, and then with UCIS to obtain him a green card, all for the express purpose of renewing his CDL. In early November 2022, Mr. Jack finally had his green card in hand and went back to the DOL, thrilled to be able to provide this document that had become the cause of his loss of livelihood.

But his excitement soon turned to distress when he was then told he would need to re-complete the required training, pass all required knowledge tests, obtain a CLP, and pass all required skills tests to be issued a CDL again. This was extremely frustrating to hear because he had always held the requisite status under the law. The unique status held by American Indians born in Canada and Mr. Jack's status as such is significant because the Federal Motor Carrier Safety Administration CDL regulations include the general eligibility requirement that an applicant be a citizen or lawful permanent resident of the US. And although the regulation sets out a number of different documents acceptable as proof of US citizenship, the only document permitted for evidence of lawful permanent residence status is a green card.

In fact, there are a variety of different ways an American Indian born in Canada can document their status, and thus may hold proof of LPR status that is in a form different from a green card. I urge an amendment to the language of WAC 308-100-020 (2)A that would accept an unexpired green card or its equivalent for the purposes of CDL eligibility, for an individual who is a Canadian citizen and Washington state resident. An example of such an equivalent could be an I-94 stamp indicating entry under Section 289 as an American Indian born in Canada, as this serves as proof of lawful entry to the US in this status.

Another type of equivalent proof could be presentation of the underlying documents required by Section 289 in the same manner that are accepted, for example, by the Social Security Administration. A regulatory amendment or even an informal amendment through a policy memorandum, accepting a green card or its equivalent for CDL purposes would not only compliment the Indian treaty recognition and other exemptions already in place elsewhere under both Washington state and federal law, but it would be consistent with the federal government's recognition of American Indians born in Canada as

lawful permanent residents, and would continue to satisfy the policies underlying the US citizenship lawful permanent resident requirement for CDL issuance.

We have been trying to liaise with the Department of Licensing for over a year on this situation, to find a solution that would allow Mr. Jack to renew his CDL without having to repeat the entire CDL application process. For example, if his prior renewal application could have simply been treated as having been held in abeyance, this would've remedied the issue. However, we've been repeatedly advised that because he is been without a CDL for a year or more, current policy requires him to complete the required training, pass all required knowledge tests, obtain a CLP and pass all required skills tests.

Due to being out of work for so long as a direct result of this issue, he cannot afford the significant fees, particularly training fees involved in starting from square one with his licensure, nor should he have to repeat remedial training. He has over three decades of experience in the commercial trucking industry and has even trained other drivers throughout his career. It's unduly burdensome for him to have to pay significant fees to complete CDL training again when he held the rightful status all along, but Department of Licensing would not facilitate documentation of his status through anything but a green card.

The proposed new WAC language at 308-100-045, if accepted, would go a long way in helping his situation by eliminating any additional training requirement for the same class endorsements and restrictions he previously held. Although he would still be required to pass all required knowledge tests, obtain a CLP and pass required skills tests to be issued a CDL, it would be a major step forward in his ability to reclaim his CDL licensure. So, we urge the agency to approve this proposed language as well as consider an amendment to WAC 308-100-020 to accept a green card or its equivalent as documentation of lawful permanent residence status. On behalf of Mr. Jack, thank you so much for your time and consideration of this matter.

Ellis Starrett:

Thank you for your testimony, Heather.

Next, we'll hear from Abigail Potter.

Abigail Potter:

Hi. I will pull up my comment. Hi, I'm Abigail Potter. I'm with the Washington Trucking Associations ,and I'm testifying in support of the rulemaking. Over the last 20 years, Washington has experienced a 30% growth in population. Currently, about 1 in 17 Washington jobs involves the trucking industry. In 2022, the Washington legislature recognized the need to increase Washington's pool of CDL holders, and directed DOL to evaluate current CDL requirements to determine whether adjustments were necessary to help alleviate the driver shortage in Washington.

The study conducted by the Washington State University recommended DOL do the following: increase the number of skills test examiners and testing capacity for retests; implement the American Association of Motor Vehicle Administrators skills test modernization to eliminate problems with the pre-trip inspection evaluation; conduct future research on minimum training hours and how training hours are assessed to see if the current minimum hours are necessary; eliminate retraining of ELDT for previous

CDL holders, which we definitely heard some testimony in support of that; support CDL recruitment efforts, and reduce the barriers for military and veterans to complete ELDT in Washington. WTA views these recommendations as a positive step to reducing well-known pain points during the CDL licensing process.

DOL has incorporated most of Washington State's University's recommendations, but WTA hopes DOL will work to review the minimum hours requirements, particularly for hazardous materials endorsements, provide greater flexibility from the military and veterans, and look towards streamlining Washington's ELDT program that would improve highway safety and better utilized DOL staff resources. WTA supports the expanding of the time periods for the renewal of CDLs, and for individuals who allowed their credentials to downgrade. The increase from one year to two years for no retesting is something that we strongly support. And then, from two years to eight years, only retesting would be required, and not having to redo entry-level driver training.

The adoption of WTA's petition, expanding the definition of training provider, is something that we felt was necessary to kind of create support for contractors within the state. And it also helps DOL really know who is training individuals, and make sure that it's the contractor who is listed, since they're the ones that are submitting those training records to the federal TPR. The revising of the skills test, which was approved by the legislature this year, lowering it to \$175 will, because we're moving from a two test to a one test, this will create better flexibility in making sure that you don't have to go back to the exact same examiner, and will make it a lot easier for people having to reschedule if they fail on the first time.

Supporting the revising of terms, classroom, instructor led proficiency based learning, demonstrated proficiency and English proficiency. Then, also the establishment of demonstrated proficiency standards. We know that this is a pet peeve of the Department of Licensing. We are supportive of clarifying the federal requirements that require training providers to document and assess hours. DOL is requesting documentation of behind the wheel hours, or requiring a written policy and support. The only request that WTA has is incorporating an additional section under the demonstrative proficiency section, which would include in complying with subsection 3 and 4, training providers may use any form of documentation, provided that is sufficient to demonstrate that trainees have been evaluated on the learning standards covered by the rubric provided by the department.

We strongly feel that this is necessary to ensure that the companies that are going above and beyond the federal and state ELDT standards are not subject to any additional documentation requirements, or not having to reinvent their current procedures that are well tested within and meet kind of their company needs [inaudible 00:20:04] standards. So we hope that DOL will adopt that provision. And then, within that, there's other aspects of the harmonization with the FMCSRs regarding those serious traffic violations, examination requirements and CDL issuance standards. We do support those aspects.

So, in conclusion, WTA appreciates the strong collaboration DOL has had with the trucking industry, and looks forward to working with DOL over the next few years to streamline Washington's entry level driver training program. To really increase the number of audits of training providers and eliminate the duplicate nature of the Washington TPR and the instructor registration process that will better utilize DOL's resources and really support highway safety. So, thank you again for your time today.

Ellis Starrett:

Thank you for your testimony,

Melissa Pace?

Melissa Pace:

Good morning, everyone. Thank you for allowing me to submit my comments. I agree with Abigail and also the first, Heather that we heard from. I have been a trainer for more than seven years. I have a lot of experience from a CDL school background, as well as working with companies, to be able to see just what so many people encounter when it comes to the challenges for getting their CDL and training, and basically everything that we were just hearing from Abigail.

What I do want to say is that I am extremely pleased that these changes are occurring, and that I really see the DOL is working to make this process stronger, more efficient, without sounding terrible, but that's not something I'm familiar with ever encountering. So, I do commend you all for that. I really appreciate it.

The one thing that I do want to touch base on with the changes, as far as proficiency and training requirements and so on, I strongly suggest that if it's possible to make it so that compliance is something that is enforced more frequently. I know that's not something that I want to have happen to me obviously, but I know that I am in compliance. But my experience over the years is that it's not happening enough, and so I see the problems mounting and building, and there doesn't seem to be any fear of any consequences with these training providers.

We all want to have everyone on the road driving next to us being safe drivers, and having adequate training, and being trained according to what they're actually supposed to be receiving. And the only way that that's going to happen is if people are able to be held accountable for when they're not doing that. So, I just really wanted to push for that part of it, especially with the proficiency training. I agree, yes, it has been a pet peeve with the DOL and I don't blame them. But having that clarification, I am really happy that that's something that was put out.

I do agree with Abigail to ensure that it's something that can be equivalent to what the DOLs rubric is. I feel that that would actually be more beneficial, especially for the companies and training providers that are actually trying to make sure that everyone is meeting that. And then, again, compliance to ensure that the ones that are not doing it are being held accountable for their actions.

But other than that, that was really all I just wanted to say is, if we could get... Can we get some audits? Can we get some compliance so that way, this training is put back on track and we're putting quality drivers out there on the road, and quality drivers for the companies that are looking for those CDL drivers, because the schools, there's so many that get put through them right now and it just seems to be problematic with how that's going. Thank you.

Ellis Starrett:

Thank you for your testimony.

I see Todd Schwank put his name in, and I'm wondering, Todd, if you're wishing to testify? And if you could also please state if you're testifying on behalf of an organization, and your contact information.

Todd Schwank:

I entered my information twice. I hit the enter key fast, so I'm [inaudible 00:25:05].

Ellis Starrett:

Oh, it's down there, nevermind.

Todd Schwank:

Oh, that's fine. As Abigail said, we are for the changes. I will state though, as a member of the second largest LTL carrier in the United States, we find the Washington Department of Licensing entry-level driver training process cumbersome, redundant to the federal TPR, and we probably reduced the number of CDL drivers we trained in Washington state for that very reason. We are all for being audited, and looking at our program because it far exceeds the federal guidelines and far exceeds Washington guidelines.

However, administratively, it is cumbersome and problematic, and we have questions about the way it is legally set up in regards to requesting employee information that are non-Washington residents. However, we are for the changes and look forward to working with the Washington Department of Licensing, and going forward. That's all I have for comments.

Ellis Starrett:

Thank you for your testimony, Todd. Next, we have Arturo Sandoval Medina? I think, maybe Art?

Arturo Sandoval Medina:

Yes. Hi, I'm Art. I'm representing EJ Freight's safety department. I'm also an inspector for different size carriers. I'm an actual, I'm a CDL holder myself and I went through the process. I had my license in California, and I let it just canceled. And when I came back, when I arrived in Washington, I had to do the whole process all over again. I didn't mind. As part of being a trucker, you need to basically retest new equipment coming up, new trucks, new everything, not everything. It's totally new from back in the days. And I do... I'm like so-and-so with the proposal. I mean, there's some stuff that could be slightly different when I was doing the test.

A little bit, not too harsh, but too choppy, I say. Not fair. It depends, I guess, it depends on the tester. If I felt like the tester was not too lenient, it was just chop your head off right away. And it is an 80,000 pound unit going down the road. It could kill somebody. But the other hand, I mean, it's just, maybe people get too nervous and mess up. But I do appreciate that the fact that everybody gets retested. I'm waiting for my retest once my CDL is up for renewal.

And some of the stuff that I encounter, it was a pre-trip, and some of those drivers were, they don't get it or they don't care on the pre-trip stuff. I'm really, really pushy about it here at the company because it's, like I said, it's an 8,000 pound vehicle, and anything can happen when you are going down the road. And I do like the fact that they were really on it when I got the test done. So, paperwork's paperwork, but that is really important. That's important for me as a CDL holder, and then also as a public driver.

It's heavy equipment moving down the road. And the paperwork stuff, paperwork's paperwork. We got to follow the paperwork. Whatever people say that we got to submit, we just got to submit and comply with it. It is what it is. I mean, that's my opinion. I mean, I've seen a lot of equipment that's, and drivers that question myself, "How did these people get their license, when some of them, they don't even know the basics around the truck?" How to unplug your air hoses, how to check for tires' wears. I don't even check your tire pressures, stuff like that.

But that's just me. Some people have different ways to learning it, and I think the classes that DOL requires as a CDL holder get, they're really efficient. And I believe a little bit more hours on the pre-trip stuff should be [inaudible 00:30:36] on this, is all. I don't know, that's just my opinion. That's all I got.

Ellis Starrett:

Thank you so much, Art, for your testimony.

Nicholas Trujillo?

Nicholas Trujillo:

Yes, good afternoon. My name is Nicholas Trujillo. I'm the Regional Training Center Site Manager for Walmart Transportation in Grantsville, Utah. We are obviously a CDL training center for our own associates within Walmart. And being a regional training location, we occasionally do train residents of Washington. And my comments merely just second that of Todd. I think the Washington State Agency is doing a great job managing the program. However, I do find that the Licensed Express Program system, in specific, is cumbersome and is redundant from the federal system, and that do standardized across what other states are doing by following the training provider registry requirements of the ELDT. I think that should be sufficient. I do not believe that we should be having to utilize redundant systems.

Ellis Starrett:

Thank you for your testimony, Nicholas. Is there anyone wishing to testify who has not already testified?

For folks who are muted, if you're having trouble unmuting yourself to testify, your mic should be in the bottom left corner of your screen.

All right. Thank you for your comments. The department will prepare a concise, explanatory statement, which will, among other things, summarize all the oral and written comments received regarding the proposed rules, and respond to them by category or subject matter. Copies of the concise explanatory statement will be forwarded to all those who have made oral or written comments today.

This hearing is now adjourned.