

WSR 23-23-180

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 22, 2023, 10:23 a.m., effective December 23, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the current definitions related to commercial driver's license (CDL) holders to decrease regulatory barriers to obtaining a CDL per a petition from the Washington Trucking Association, as well as implementation pursuant to HB 1058 passed during the 2023 legislative session.

Citation of Rules Affected by this Order: New WAC 308-100-034 Demonstrated proficiency and 308-100-045 Reinstatement of a CDL after disqualification, cancellation, expiration, revocation, surrender, suspension, or transfer; repealing WAC 308-100-135 Out-of-service order violations; and amending WAC 308-100-005 Definitions, 308-100-020 Commercial driver's license—Eligibility, 308-100-033 Minimum training requirements, 308-100-035 Employer certification, 308-100-040 Examination requirement for commercial driver's license, 308-100-050 Examination fees, 308-100-100 Intrastate waiver, 308-100-130 Serious traffic violations, and 308-100-180 Third-party testing fee.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and HB 1058.

Adopted under notice filed as WSR 23-21-101 on October 18, 2023.

Changes Other than Editing from Proposed to Adopted Version:

Based on conversations during the public comment period, the department amended proposed WAC 308-100-034 Demonstrated proficiency, to add a new subsection which enables training providers to use any form of documentation, provided it meets the learning standards covered by the rubric issued by DOL. Additionally, the department removed the word "disqualification" from the "Without a CDL" definition in WAC 308-100-005, based on internal conversations.

A final cost-benefit analysis is available by contacting Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-0131, email rulescoordinator@dol.wa.gov, website dol.wa.gov/rulemaking-activity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 22, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-5027.2

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

WAC 308-100-005 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind-the-wheel (BTW) range training" means training provided by a BTW instructor when a student has actual control of the power unit during a driving lesson conducted for backing, street driving, and proficiency development. BTW range training does not include time a student spends observing the operation of a CMV when he or she is not in control of the vehicle.

(2) "Behind-the-wheel (BTW) instructor" means an individual who provides BTW training involving the actual operation of a CMV by a student on a range or a public road and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exception applicable to (a) and (b) of this definition:** A BTW instructor who provides training solely on a range which is not a public road is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated.

(3) "Certified test route" means:

(a) Test route that is approved and assigned by the department.

(b) The areas for completing the pretrip inspection, basic controls and road test as approved by the department for the administration of a commercial driver license skills test.

(4) "Classroom" means a space dedicated to and used exclusively by an instructor for the instruction of students. With prior department approval, a classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, public agency, or a business training facility. "Classroom," may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

(5) "Classroom/theory instruction" means knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audiovisual presentations, computer-based instruction, driving simulation devices, or similar

means. Instruction occurring outside a classroom is included if it does not involve actual operation of a commercial motor vehicle and its components by the student.

~~((5))~~ (6) "Demonstration of proficiency" means driver-trainee must demonstrate proficiency in required skills over time. Demonstration of proficiency of state and federal entry level driver training standards is not met by the completion of minimum hours of training. Nor is it limited to a single standardized assessment result.

(7) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

~~((6))~~ (8) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

~~((7))~~ (9) "English proficiency" means applicants for a commercial motor vehicle skills test must be able to understand and respond to verbal commands and instructions in English by a skills test examiner per 49 C.F.R. 383.133(5).

(10) "Hour," as used in connection with training requirements, means no less than ~~((fifty))~~ 50 minutes of training or instruction.

~~((8))~~ (11) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled. Some classroom instruction may include self-paced, online components as authorized and certified by the department of licensing. Completely self-paced, online training courses are not authorized.

(12) "Lab" means a teaching environment involving a nonmoving vehicle for hands on instruction supported by classroom material.

~~((9))~~ (13) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of course instruction, recording lessons learned and applying classroom material.

~~((10))~~ (14) "Proficiency development" means driving exercises that will allow more time to develop the skills needed to demonstrate proficiency, competence, and confidence in the street driving and backing maneuvers portions of a course.

~~((11))~~ (15) "Proficiency-based learning" means:

(a) Learning outcomes emphasize competencies that include application and creation of knowledge along with the development of skills and abilities;

(b) Competency criteria and standards are explicit, measurable, transferable learning objectives that equip driver-trainees with necessary knowledge, skills, and abilities;

(c) Assessments are meaningful and directly related to driver-trainees' accomplishment of objectives;

(d) Driver-trainees receive rapid, differentiated support based on their individual learning needs; and

(e) Driver-trainees are given specific and actionable feedback that allows them to advance upon demonstrated proficiency of content in all required areas of the curriculum.

(16) "Range" means an area closed from the public where driving activities are practiced, free of obstructions, enables the driver to

maneuver safely and free from interference from other vehicles and hazards, and has adequate sight lines.

~~((12))~~ (17) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

~~((13))~~ (18) "Theory instructor" means an individual who provides knowledge instruction on the operation of a CMV and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exceptions applicable to (a) and (b) of this definition:** An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated.

~~((14))~~ (19) "Training institute/provider" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1) (a) (ii):

(a) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(b) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); ~~((10))~~

(c) An entity in another state that the department has determined provides training or instruction equivalent to that required under WAC 308-100-033 or 308-100-035; or

(d) An entity that the state has determined provides on-site contracted training or instruction equivalent to that required under WAC 308-100-033.

(20) "Without a CDL" means any period of cancellation, expiration, revocation, surrender, or suspension.

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

WAC 308-100-020 Commercial driver's license—Eligibility. (1) Any person who is at least ~~((eighteen))~~ 18 years of age and who meets the requirements of chapter 46.25 RCW may apply to the department for a commercial driver's license.

(2) For the purposes of clarifying when a CDL cannot be issued to citizens of Canada or Mexico:

(a) A driver who is a citizen of Canada or Mexico must be a resident of Washington, and either be a citizen of the U.S. or have an unexpired Permanent Resident (Green) Card (Form I-551) to obtain a Washington CDL.

(b) A driver who is a citizen of Canada or Mexico that is a resident of Washington but only has an employment authorization document cannot be issued a Washington or non-Domiciled CDL.

NEW SECTION

WAC 308-100-034 Demonstrated proficiency. For the purposes of establishing the definition of demonstrated proficiency, where and how proficiency is assessed, and procedures for reporting to the department.

(1) Per WAC 308-100-033 and 49 C.F.R. Part 380, training providers must determine and document that each driver-trainee has demonstrated proficiency in all elements of behind-the-wheel (BTW) curriculum, unless otherwise noted. Proficiency-based learning must be used to teach and determine driver-trainees' basic vehicle control skills, mastery of basic maneuvers, and public road operation, as covered in 49 C.F.R. 383.111 and 383.113, necessary to operate the vehicle safely.

(a) Consistent with the definitions of BTW range training and BTW public road training in 49 C.F.R. 380.605, a simulation device cannot be used to conduct such training or to demonstrate proficiency.

(b) Training providers must document the actual number of clock hours each driver-trainee spends to complete the BTW curriculum.

(c) Driver-trainees are not required to demonstrate proficiency in the following skills:

(i) Hazard perception;

(ii) Railroad (RR) highway grade crossing;

(iii) Night operation;

(iv) Extreme driving conditions;

(v) Skid control/recovery, jackknifing, and other emergencies.

(2) Training providers must adopt a written policy for driver-trainee demonstration of proficiency.

(3) Training providers shall use a learning standards rubric, provided by the department, in addition to federally determined learning standards as criteria when making decisions regarding driver-trainee demonstration of proficiency. Training providers shall provide proficiency standards to driver-trainees in writing at the time of enrollment.

(4) Training providers shall document successful demonstration of proficiency in all required areas of the curriculum prior to submitting a course completion to the department. Documentation must include the date, time, and location of the assessment, means of assessment used, and identification of staff who conducted the assessment of proficiency.

(5) In complying with subsections (3) and (4) of this section, training providers may use any form of documentation, provided that it is sufficient to demonstrate that trainees have been evaluated on the learning standards covered by the rubric provided by the department.

(6) Training providers must determine any potential driver-trainee has the basic skills necessary to complete and benefit from the program including, but not limited to, determining English proficiency as defined in WAC 308-100-005. Training providers subject to WAC 490-105-140 and RCW 28C.10.050 (1)(g), must conform to additional requirements from the workforce training and education coordinating board.

AMENDATORY SECTION (Amending WSR 20-19-032, filed 9/9/20, effective 10/10/20)

WAC 308-100-035 Employer certification. (1) An employer may ~~((certify that one of))~~ train its employees ~~((has))~~ on the skills and training necessary to operate a commercial motor vehicle ~~((safely by certifying the employee has demonstrated proficiency in the elements of the))~~ in accordance with course of instruction required in WAC 308-100-033, with the exception of the minimum required hours ~~((, on a form provided by the department))~~. The ~~((certification))~~ training must ~~((include))~~ be relevant to the classification or endorsements of commercial motor vehicle that the employee is ~~((competent))~~ licensed to operate.

(2) The certification of training completion must be provided to the department electronically according to WAC 308-100-036. ~~((Beginning on February 7, 2022,))~~ An employer may only ~~((certify that an applicant for a CDL has the skills and training necessary))~~ submit completion of training to operate a commercial motor vehicle safely if the employee has successfully completed training with a training provider listed on FMCSA's Training Provider Registry established under 49 C.F.R. 380.700.

(3) The department must receive an electronic notification of successful completion prior to an employee taking a skills test.

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

WAC 308-100-040 Examination requirement for commercial driver's license. (1) Persons applying for a commercial driver's license ~~((will be))~~ are required to pass a written examination testing their knowledge of commercial motor vehicle laws, rules of the road, and operating characteristics of the class and/or endorsement of vehicles for which they are seeking the commercial driver's license. ~~((They will also be))~~ Applicants are required to ~~((demonstrate))~~ successfully ~~((their))~~ demonstrate operating skills for the class of vehicle and endorsement(s) for which they seek the commercial driver's license.

(2) Knowledge and skills test scores are valid according to the following conditions:

(a) Double/triple and HAZMAT knowledge tests are valid for 180 days.

(b) General knowledge, passenger, school bus, air brake, and combination tests are valid for 180 days or through one CLP renewal cycle not to exceed one year (365 days) from the initial issuance.

(c) Tanker knowledge tests are only valid for 180 days unless the endorsement has been added to a valid commercial learner's permit.

When the endorsement is added to the permit, the test scores shall be valid for 180 days or through one CLP renewal cycle not to exceed one year (365 days) from the initial issuance.

(d) Skills tests scores for passed segments of the test are only valid during the initial issuance of the CLP. The renewal of a CLP nullifies any previously passed test segment scores.

(e) Excepting knowledge tests in (a) and (c) of this subsection, knowledge test scores remain valid when a CLP is renewed once for an additional 180 days not to exceed one year (365 days) from the initial issuance. Any subsequent CLP issuance or renewal requires retesting in all relevant knowledge areas.

(3) The department will conduct knowledge and skills examinations that at a minimum meet the requirements of 49 C.F.R. 383.133, as it existed on (effective date of WAC).

NEW SECTION

WAC 308-100-045 Reinstatement of a CDL after disqualification, cancellation, expiration, revocation, surrender, suspension, or transfer.

(1) CDL holders may reinstate a CDL after a period of disqualification, cancellation, expiration, revocation, surrender, suspension, or transfer under the following conditions:

(a) Any driver that has been without a commercial driver license (CDL), less than two years, if eligible, may reinstate the same CDL, endorsements, and restrictions without any additional training or testing provided all other issuance requirements have been satisfied.

(b) Any driver that has been without a commercial driver license (CDL), two years or more but less than eight years, may reinstate the same CDL, endorsements, and restrictions without any additional training. However, the driver must pass all applicable CDL knowledge tests, obtain a CLP, and pass all required skills tests provided all other issuance requirements have been satisfied.

(c) Any driver without a commercial driver license (CDL) for eight years or more, may reinstate the same CDL, endorsements, and restrictions, if otherwise eligible, must pass all required knowledge tests, obtain a CLP, complete required training, and pass all required skills tests. All other issuance requirements must be satisfied.

(i) Drivers must complete all required training for their intended class and endorsements as stated in WAC 308-100-033.

(ii) Any driver wishing to upgrade the class or endorsement(s) of their CDL at the time of reinstatement must complete all required training and tests associated with that upgrade.

(d) A driver transferring to Washington without a valid CDL, who surrendered that license prior to transfer may reinstate the same CDL, endorsements, and restrictions, if otherwise eligible, shall follow the procedures set forth in (a), (b), or (c) of this subsection as appropriate.

(2) For the purposes of reinstatement, all course completion, knowledge test, and skills test scores are valid for a period of six months.

(3) Drivers are not eligible for reinstatement if currently under any type of disqualification that would not allow them to be issued a CDL.

AMENDATORY SECTION (Amending WSR 17-22-074, filed 10/27/17, effective 11/27/17)

WAC 308-100-050 Examination fees. (1) The examination fee for each commercial driver's license knowledge examination, commercial driver's license endorsement knowledge examination, or any combination of commercial driver's license and endorsement knowledge examinations, shall be ~~((thirty-five dollars))~~ \$35.

(2) (a) Except as provided in subsection (2) (b) of this section, the examination fee for each commercial driver's license skill examination conducted by the department shall be ~~((two hundred fifty dollars and entitles the applicant to take the examination up to two times in order to pass.~~

~~(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by the department shall be two hundred twenty-five dollars and entitles the applicant to take the examination up to two times in order to pass:~~

~~(i) Public benefit not for profit corporations that are federally supported head start programs; or~~

~~(ii) Public benefit not for profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405.~~

~~(c))~~ \$175.

(b) If the applicant's primary use of a commercial driver's license is to drive a school bus, the applicant shall pay a fee of no more than ~~((one hundred dollars))~~ \$100 for the classified skill examination or combination of classified skill examinations conducted by the department and entitles the applicant to take the examination up to two times in order to pass.

(3) Drivers selected for reexamination by the department may be subject to costs associated with the testing.

(4) The fees in this section are in addition to the regular drivers' licensing fees.

AMENDATORY SECTION (Amending WSR 14-20-053, filed 9/25/14, effective 10/26/14)

WAC 308-100-130 Serious traffic violations. In addition to the violations enumerated in RCW 46.25.010, "Serious traffic violation" shall include:

(1) Negligent driving in the first or second degree, as defined by RCW 46.61.5249, 46.61.525, or 46.61.526;

(2) Following too closely, as defined by RCW 46.61.145, or 46.61.635;

(3) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.365, 46.61.370, 46.61.375, or 46.61.385;

(4) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(5) Speed too fast for conditions, as defined by RCW 46.61.400;

(6) Improper lane change or travel, as defined by RCW 46.61.070, 46.61.105, 46.61.140, 46.61.290, or 46.61.608;

(7) Improper or erratic lane changes, including:

- (a) Improper overtaking on the right, as defined by RCW 46.61.115;
- (b) Improper overtaking on the left, as defined by RCW 46.61.110, 46.61.120, or 46.61.130; and
- (c) Improper driving to left of center of roadway, as defined by RCW 46.61.125;
- (8) Reckless endangerment of emergency zone workers, as defined by RCW 46.61.212;
- (9) Reckless endangerment of roadway workers, as defined by RCW 46.61.527; (~~and~~)
- (10) A conviction of an administrative rule or local law, ordinance, rule, or resolution of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this section; and
- (11) Use of a motor vehicle in the commission of any trafficking offense as defined in RCW 46.25.090, 9A.40.100, and 49 C.F.R. 383.51.

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

WAC 308-100-180 Third-party testing fee. (1) (a) Except as provided in WAC 308-100-190 or (b) of this subsection, the base fee for each classified skill examination or combination of skill examinations conducted by a third-party tester shall not be more than (~~two hundred fifty dollars and entitles the applicant to take the examination up to two times in order to pass~~) \$175.

(b) (~~If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by a third-party tester shall not be more than two hundred twenty-five dollars and entitles the applicant to take the examination up to two times in order to pass:~~

~~(i) Public benefit not for profit corporations that are federally supported head start programs; or~~

~~(ii) Public benefit not for profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).~~

~~(c))~~ If the applicant's primary use of a commercial driver's license is to drive a school bus, the applicant shall pay a fee of no more than (~~one hundred dollars~~) \$100 for the classified skill examination or combination of classified skill examinations conducted by the department and entitles the applicant to take the examination up to two times in order to pass.

(2) The base fee shall apply only to the conducting of the examination, and is separate from any additional fees, such as vehicle use fees, which may be charged by the third-party tester. Any additional fees to be charged shall be (~~reported to~~) approved by the department.

(3) Fees owed to a third-party tester under this section must be paid by the applicant as provided in the third-party tester agreement entered into under WAC 308-100-140.

(4) Fees paid for a test that is deemed invalid by the department must be reimbursed immediately to the applicant.

(5) The fees in this section are in addition to the regular drivers' licensing fees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-100-135 Out-of-service order violations.