



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: February 19, 2020
RE: Vehicle Driver Certification and Fleet Management Amendments: Public Meeting
Comment Review

On January 23, 2020, a public meeting was held regarding the proposed amendments to the Vehicle Driver Certification and Fleet Management law (“the Law”). The public comment period was then held open until January 30, 2020. On February 19, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received. This memorandum is submitted as the Legislative Operating Committee’s review of the oral and written comments received within the public meeting and public comment period.

Comment 1 – Support for Revisions to Law:

Barbara Kolitsch (written): Hi –The below comments are to be directed to the Legislative Reference Office, but there’s no such email, so I am submitting to Clorissa and LOC in hopes it will get to the correct office. I provided oral comments today, Jan 23, 2020. Below includes testimony I provided as well as testimony I did not have time to provide in the allotted five minutes. I appreciate the work on the LRO in revising this law. The revisions are well done! Thank you! It’s simpler and easier to follow! I recommend some additional revisions...

Response

The commenter expresses support for the proposed revisions to the Law, and provides that she has submitted some additional potential revisions for the Legislative Operating Committee’s consideration.

There is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. The Legislative Operating Committee thanks the commenter for expressing her support for the proposed amendments.

Comments 2 through 4 – Mandatory Requirement of Training for all Employees:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.5. Responsibilities of a Certified Driver

210.5-2. Training Responsibilities. An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) **Exemption.** An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): Do I need to state my name or anything? Hello, my name is Barb Kolitsch. I work for Personnel Services in the Gaming Division. I'll start my comments in regarding the training that's required for the Vehicle Driver Training or vehicle driver policy. And I am going to speak initially from my training experience. I was a training director for many years, over twenty (20) years, I was a teacher for many, for a couple of years, I was a health educator for a couple of years and also coach and I'll tell you and anyone who reads these comments, training doesn't change behavior. So, when we look at a training that's required every three years, not only do people not remember what they were trained on every three years, training isn't changing behavior. There are other ways to help change behavior of a driver and (inaudible) called the influencer, there are a lot of better ideas on how to change behaviors if we are looking at changing behaviors of drivers. So, I would recommend to remove that driving requirement or that training requirement from the drivers, the three years, every three years having to do safety training, because I don't think that, you know a ten (10) to twenty (20) minute education on safety, driver safety, is changing behaviors of your drivers. What I would recommend though, is if we have drivers and I noticed in the packet here today that we have a lot of at-fault accidents and at-fault drivers. And so what I would recommend is then taking those at-fault drivers and putting them into a specialized course. I looked up before I came here, there are online courses that an employee could be responsible for paying for it if they are an at-fault driver and these online courses guarantee that they increase the, the behaviors of drivers. So, there are online courses, the one in particular that I looked at, specifically for fleet drivers for companies, was twenty-seven ninety-five (\$27.95). So, it's something that, maybe an idea for increasing at-fault or decreasing the at-fault drivers that we have using that sort of type of, you know looking at drivers who are actually not making good decisions and putting them through training may be a better decision than putting everybody in general through training.

Barbara Kolitsch (written): Training requirements: Safety every three years for all drivers – please remove safety training requirement for all. As a former Training Director, Trainer, School Teacher, Health Teacher, and professional Coach (35 years), training/teaching or education does not result in behavior change. Requiring all employees who drive to take safety training every three years is not going to change behaviors of our drivers. When I took the training, it was more-so an act of getting through the training for compliance reasons. The reason I feel this way is because I have only been in one accident in my life...I was rearended at no fault of my own. My belief, and most people's belief will be that they are doing the training due to other people being bad drivers. In the Public Hearing materials I noticed that of the accidents tracked, the majority of

them were our employees being at-fault. To improve and change behaviors, the law should place the burden on the drivers to take safety training who have an on-duty at-fault accident, and make the employee pay for that training. I found an on-line educational site for drivers where the company claims proven behavior and success rates with their training program for \$27.95. I would require drivers who are reported to be at-risk drivers and those who have accidents while performing driving duties for the Oneida Nation. For example, if I get a ticket while driving on official duty, require me to take training.

Barbara Kolitsch (written): Training as prevention is great, but maybe it should be “voluntary” for most drivers, and mandatory for drivers who demonstrate risky on-the-job driving, or drivers who get a ticket while on duty, or drivers who have an at-fault accident while on duty. If I voluntarily take training I’m much more likely to learn by the nature I’m choosing to take it – to learn. If I’m mandated, I’m much more likely to go through the motions. This is human behavior. If I’m mandated to watch it due to my behavior at my own cost – I think I would pay attention if there’s risk of losing my job if it happens again (though disciplinary action – in the new version of the law.) I mentioned a book called *Influencer* in my in-person comments. This testimony is further supported in the research presented in the book. I was certified as a Trainer to teach the training *Influencer* in 2018. Believe me, if I felt training would change behaviors, I would feel much safer on the road. I’ve been hit 11 times while riding my bicycle by distracted drivers. I’ve had many friends hit by cars on their bikes and one friend killed on his bike. This experience has made me a more attentive as a driver because I know it’s so easy to be distracted these days! I wouldn’t recommend putting all of our drivers on a bicycle to observe how most drivers are so distracted, there has to be a better way than traditional “training”.

Response

The commenter provides her disbelief that requiring every employee of the Nation to complete a driver safety training provided and monitored by the Human Resources Department would have any impact on the behavior or driving capabilities of an employee. Instead, the commenter suggests that the mandatory training requirement be removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course.

The Law provides that in order to receive driver certification a person shall complete all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Law further provides that any individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years. [2 O.C. 210.5-2]. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies is exempt from the requirement to complete the driver safety training provided by the Human Resources Department. [2 O.C. 210.5-2(a)].

What driver safety requirements to impose on an employee of the Nation is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following considerations:

1. The Law should remain as currently drafted to require that in order to receive and maintain driver certification a person shall complete and maintain all driver training requirements imposed by the Nation or any federal or state agency regulations.
2. The Law should be revised so that the mandatory training requirement is removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall ~~complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.~~

~~(a) Exemption. An individual who is required to~~ maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies. ~~shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.~~

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-8. *Driver Safety Training.* A supervisor may require that an individual complete a driver safety training, at his or her own expense, if the individual:

- (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;
- (b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and
- (c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include driver safety training if a certified driver is involved in an at-fault accident or receives a moving violation while on duty, in addition to the triennial mandatory training for all certified drivers that is already required by the Law.

The Legislative Operating Committee discussed at lengths the merits of requiring training for an individual to obtain and maintain driver certification with the Nation. Although the Legislative

Operating Committee values the commenter's experience as a trainer and understands the commenter's belief that mandatory training does not necessarily change behaviors, the Legislative Operating Committee determined that in order to minimize the risk and liability of the Nation while promoting safe driving it is important that the Nation require mandatory training as a qualification of obtaining and maintaining driver certification.

Additionally, the Legislative Operating Committee liked the idea of requiring an individual who is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business or obtains a moving violation while driving on official business to be required to take additional training at his or her own expense. This provides an opportunity to provide additional training to a person whose actions demonstrate a need for more training. The Legislative Operating Committee hopes that there can be more than one option for the additional driver safety training so that it can be made applicable to whatever action of the certified driver resulted in the requirement to take additional driver safety training.

The Legislative Operating Committee has previously discussed training options with the Nation's Human Resources Department's Training and Development and has now determined that they will follow up with communication with Training and Development to have further discussions on ensuring that the driver safety training that is offered to certified drivers of the Nation is efficient, effective, and applicable to the drivers.

The Legislative Operating Committee directed the following revisions be made to the Law based on this comment:

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-8. Additional Driver Safety Training. A supervisor may require that an individual complete an additional applicable driver safety training, at his or her own expense, if the individual:

(a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;

(b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and

(c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

- (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.
- (b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.
- (c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): And then it's also difficult, it's a tracking, something that has to be tracked, it's a lot of administrative work to track whether somebody has been trained or not. Recently we just went through somewhat of an audit with training and we had drivers who were required to have the training who didn't. So, again it's an administrative nightmare, there is a lot of responsibility put on HR and put on supervisors to make sure that they have that training.

Barbara Kolitsch (written): Tracking training is a huge administrative burden. As former Training Director at Human Resources, every time we had required training for large groups, there are legitimate reasons people are noncompliant: leave of absence, vacation, business (customer priority), staff shortage, staff emergency, etc. In a recent self-audit in Gaming the Personnel Services staff found there were some Gaming employees who needed drivers safety training and never had taken it almost three years ago. Gaming has a very high compliance rate in training requirements from my experience as former Training Director, yet we still missed a few. Some may feel it's our job (HR or Personnel Services), but in reality it's the supervisor's job to make sure employees are in compliance with policies and procedures. There's a lot for supervisors to track, so this may be an important thing to track, but may be put on the backburner when there's a

business to run and customers/clients/and more urgent matters to deal with. Safety training is not urgent, it's purpose is meant to help prevent accidents.

Response

The commenter provides insight on the administrative burden that is placed on the Human Resources Department and supervisors with tracking compliance with driver safety training. The commenter provides this information for the Legislative Operating Committee to consider in regard to the request to remove the mandatory requirement of driver safety training for all certified drivers of the Nation.

The Law currently requires that an individual obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business. [2 O.C. 210.4-1]. One qualification for receiving driver certification is completing all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Nation's Human Resources Department is delegated the responsibility for determining whether an individual meets all qualifications before approving or denying a driver certification. [2 O.C. 210.4-3]. Additionally, a supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4].

The Law currently places responsibilities on both the supervisor and the Human Resources Department to ensure that an individual meets the qualifications for and has obtained driver certification before being allowed to operate a fleet vehicle or a personal vehicle while conducting official business. This is for the purpose of limiting the liability of the Nation by ensuring that only certified drivers are permitted to operate a fleet vehicle or a personal vehicle on official business. If the Law is going to require that an individual obtain driver certification, then the responsibility to determine if someone meets the qualifications and has obtained driver certification needs to be delegated to an individual or entity.

Additionally, in the previous comment, the Legislative Operating Committee was specifically asked to consider the utility of imposing mandatory driver safety training on every individual who wishes to obtain and maintain driver certification. It is recommended that the Legislative Operating Committee take into consideration the administrative burden tracking driver safety training imposes on the supervisors and Human Resources Department when making that consideration.

LOC Consideration

The Legislative Operating Committee considered the administrative responsibility of requiring mandatory training for all certified drivers of the Nation, but ultimately determined that there was no revision to the Law needed based on this comment.

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

Barbara Kolitsch (oral): My next comment is regarding the driving record and moving violations. My question to the LOC or the LRO is, when someone is off duty, why do we penalize an employee? So, for example, if the State law says I can drive, why can't I drive for the job? I do think we should track on duty violations and again tie that back to training and tie that back to disciplinary action if somebody is violating their driving rules that we have in the organization or driving laws that the State or Federal regulations have. So, what was added into the new vehicle driver policy was moving violations, and again, if I have three speeding tickets in the next two years I become not certifiable and if these violations were all off duty, why is the organization punishing me for something that I did off duty? I think we all do things off duty that we wouldn't do at work, so I'm not sure what the correlation is really.

Barbara Kolitsch (written): Driving record – please remove the consideration of violations on driving record – including drug and alcohol related I challenge the Committee to assess the requirement to be certified and only consider my driving record while on duty. If the state of Wisconsin says I can drive, and in the case of a personal vehicle – I'm paying for my insurance, why can't I drive? I understand that if I cause an accident that causes more liability that I carry, the Tribe's insurance kicks in, but I'm paying for the speeding tickets with my higher insurance rates. If I have three speeding tickets in the next two years, I would lose my job? And this doesn't consider at all the fact that I had these tickets off duty. Everyone makes personal choices in their lives, and we all make some while off-duty that we may not do at work. Why does my off-duty behavior certify or not certify me to be able to drive. In most cases we look at a person's state license...example: to teach, practice medicine, social work, day care, etc. So we recognize that license. Why don't we recognize this state license to drive?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, due to the belief that it is unfair to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation. The commenter recommends that in order to receive driver certification a person simply maintains a valid Wisconsin driver's license.

The Law provides that in order to receive driver certification a person shall have a driving record that does not reflect any of the following conditions:

1. Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
2. An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
[2 O.C. 210.4-2(c)].

The qualification based on the individual's driving record is in addition to qualifications that the individual:

- is at least eighteen (18) years of age or older;
- holds a valid Wisconsin driver's license;
- completes all driver training requirements imposed by the Nation or any federal or state agency regulations;
- satisfies any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
- maintains minimum insurance requirements for a personal vehicle if the individual will be using his or her personal vehicle to conduct official business.
[2 O.C. 210.4-2(a)-(f)].

What qualifications to use when determining if an individual qualifies for driver certification is a policy consideration for the Legislative Operating Committee. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers.

A review of an individual's driving record when determining if an individual is qualified for driver certification is not a new provision included in the amendments to this Law, although it is being modified. The currently effective version of the Law, as adopted through resolution BC-06-28-17-C, provides that in order to be certified, an individual shall pass a driving record check by the Human Resources Department to verify that the driver has no citation or conviction related to a traffic incident, and no driving citation or conviction involving drugs or alcohol, within the time period that would make the driver ineligible for certification under this law. [BC-06-28-17-C - 2 O.C. 210.8-1(d)]. This means that if an individual has any citation or conviction related to a traffic incident, then that person is not eligible to become a certified driver. Due to the fact that the Law lacked clarity as to what exactly a "traffic incident" included, the Nation's Human Resources Department had many issues with how to interpret this provision and determine if an individual should be certified for driving. Because of these interpretation issues, the Human Resources Department issued an interpretation in 2017 that defined a traffic incident as "any traffic incident that results in the loss of an applicant's and/or employee's valid Wisconsin driver's license."

Prior to the 2017 version of the Law, the Vehicle Driver Certification Policy, which was originally adopted by the Oneida Business Committee on October 21, 1992 and then amended through resolution BC-09-09-98-A, also prohibited a person from obtaining driver certification if he or she

had certain driving violation convictions within a three (3) year time period. [BC-09-09-98-A – I.A.4(a)-(b)].

Since at least 1992, the Nation has worked towards ensuring the safety of the community and employees while also minimizing the liability of the Nation by qualifying certification as a driver for the Nation on a review of an individual's driving record. The specifics of what citations or convictions could disqualify an individual from receiving his or her driving certification during the driving record review has changed throughout the years.

Whether or not to include a review of an individual's driving record when determining if an individual meets the qualifications to obtain driver certification, or simply base qualification off of the fact that an individual has a valid Wisconsin driver's license, is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) year, and/or an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
2. The Law should be revised so that a review of an individual's driving record is not required to qualify for driver certification, and all that is necessary for qualification for driver certification in terms of driving record or licensure is that the individual has a valid Wisconsin driver's license. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- ~~(e) Have a driving record that does not reflect any of the following conditions:~~
 - ~~(1) Three (3) or more moving violations and/or at fault motor vehicle crashes in the past two (2) years; and/or~~
 - ~~(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.~~

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) year, and/or an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

The qualifications for obtaining driver certification for the Nation, specifically the qualifications that relate to an individual's driving record has been a topic that has been greatly discussed throughout the development of the amendments to this Law. When considering this comment, the

Legislative Operating Committee once again discussed whether a review of an individual's driving record should occur when determining if the individual qualifies for driver certification.

Although the Legislative Operating Committee understands that not reviewing the driving record of an individual and relying solely on whether the individual has a valid driver's license may allow for more individuals to qualify for employment with the Nation, the Legislative Operating Committee ultimately determined that the driving record of an individual is checked in an effort to better protect the Nation and minimize risk since the Nation ultimately bears some responsibility for the individuals it allows to be certified drivers.

In an effort to ensure that the driver certification requirements do not hinder employment of individuals when not necessary, the Legislative Operating Committee intends to request the Nation's Human Resource Department complete a review of the Nation's job descriptions to ensure that driver certification is not included as a requirement for positions in which it may not be necessary or essential to performing the job.

Comments 9 through 10 – Drug and Alcohol Related Offenses:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) **Have a driving record that does not reflect any of the following conditions:**
 - (1) **Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or**
 - (2) **An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.**

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

- (a) **A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.**

Barbara Kolitsch (oral): In addition to that the drug and alcohol violation was reduced from three years to one year, again I think if the State says I can drive with an Occupational License, why can't I drive with the organization? I don't think any of the instances where somebody comes up with a drug and alcohol violation driving, it's not been at work, it's been off work and if we correlate that to our drug and alcohol policy, our drug and alcohol policy was created in the 1990s to be a helping hand policy because Oneidas, well not specifically Oneidas, Native Americans have the highest abuse rate of drugs and alcohol. They are the highest of any ethnicity in the U.S. It's a helping hand policy. This is a cutthroat policy. If I have, if I tonight go out and celebrate a birthday with a friend, have one too many, get pulled over, get a drunk driving, I'm out of a job. Where if I come to work drunk, I drink at work, I get referred to EAP and I get help and I get

assistance, so I'm not sure, again the correlation of off duty violations and on duty violations. Okay. I can submit the rest in writing.

Barbara Kolitsch (written): Drug and alcohol related offenses. Native Americans have the highest rate of drug/alcohol addition than any other ethnicity. Our Drug and Alcohol Policy recognizes this, and was developed in the 1990's to be a helping hand policy. I can come to work drunk or drink at work and the consequence is to be referred to EAP. If I follow the requirements of the EAP agreement, I can go back to work. On the other hand - if I go out and have two drinks get pulled over and get an OWI – I will lose my job. One strike. This does not match the values of the Oneida Nation as I've known them for 30 years. How does having an OWI correlate to my on-duty driving? It will not likely correlate for most employees. If the drug/alcohol driving violation occurred during work time, I can understand a firm repercussion, but how does it relate to the job when I may have simply made a poor judgement after having a couple of drinks?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, specifically a driving record demonstrating any citation or conviction related to a drug and/or alcohol offense. The commenter provides that other laws of the Nation, such as the Drug and Alcohol Free Workplace law, provide assistance to individuals with drug and/or alcohol issues instead of simply punishing the individual for his or her actions, and this Law should follow suit. The commenter also shares the belief that it is unfair to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation.

The Law provides that in order to receive driver certification an individual shall have a driving record that does not reflect an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers to determine if the individual has a citation or conviction related to drug or alcohol offenses.

Additionally, if after an individual obtains his or her driver certification that individual's driver's license is suspended or revoked by the State, for any reason including drug and/or alcohol related offenses, the Law requires that the individual's driver certification be suspended. [2 O.C. 210.8-2]. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a suspension or leave from work. [2 O.C. 210.8-1]. The individual's driver certification is suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification. [2 O.C. 210.8-3].

An individual's action of obtaining an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation, even if that action occurred while the individual was off duty, have an impact on the individual's driver certification because an OWI, DUI, or PAC citation typically results in the suspension of the individual's driver's license for some period of time. The suspension of an individual's driver's license results in the suspension of driver certification.

So although an individual obtaining a citation for an OWI, DUI, or PAC may always have an impact on the individual's driver certification if the individual's driver's licenses was suspended or revoked as a result, how far back in time to review a individual's driving record to determine if the individual meets the qualifications to obtain driver certification is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has an OWI, DUI, or PAC citation within the last twelve (12) months.
2. The Law should be revised so that a different time period for the review of an individual's driving record for an OWI, DUI, or PAC citation is included. If the Legislative Operating Committee makes this determination then the LOC would have to make a determination as to how far back in time the driving record should be reviewed, and the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last ___(time period)___ (#)___ ~~twelve (12) months~~.

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

The Legislative Operating Committee made the determination to keep this provision in the Law unchanged because checking the driving record of a potential certified driver of the Nation for any citations related to a drug and/or alcohol related offense better ensures the safety of the community and employees of the Nation, while also minimizing the potential liability of the Nation.

Additionally, the currently effective Law requires that an individual pass a driving record check by the Human Resources Department to verify the driver has no driving citation or conviction involving drugs or alcohol, within the time period that would make the driver ineligible for

certification under this law, which has been interpreted to be three (3) years. [BC-06-28-17-C - 2 O.C. 210.8-1(d)]. The inclusion of the twelve (12) month time period to check for a citation for operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) in the proposed amendments is already relaxing the driving record check that is included in the currently effective Law. The Legislative Operating Committee made the driving record check less stringent in an effort to provide more people the opportunity to become a certified driver. But, the Legislative Operating Committee still believes that there needs to be some driving record check for citations involving operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC), and it is for that reason the Legislative Operating Committee determined the Law should remain as drafted.

Comment 11 – Current Challenges for Personnel Services:

Barbara Kolitsch (written): Current challenges/issues from Personnel Services. One of our first commitments to the Oneida Nation in Personnel Services is to employ Oneida members. This policy negatively impacts mainly Oneida enrolled members. We don't want to be in the business of screening out Oneida enrolled candidates because of their driving record such as OWI. We lose good candidates this way! We've lost good employees this way.

Response

The commenter provides that a current challenge the Personnel Services Department faces is screening out Oneida enrolled job applicants due to not meeting the qualifications for driver certification. The commenter expresses that this may have a negative effect on the Nation's goal to employ members of the Oneida Nation.

When amending this Law, the Legislative Operating Committee focused on balancing the employment needs of the Nation with the need to minimize the liability of the Nation and encourage safety. Because the Legislative Operating Committee determined that the amendments to the Law better accomplish this balance, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

Comments 12 through 13 – Insurance Requirements:

210.4. Driver Certification

210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:

(f) **Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:**

(1) **the individual's insurance covers:**

- (A) one hundred thousand dollars (\$100,000) per person;
- (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
- (C) twenty-five thousand dollars (\$25,000) property damage; or
- (2) the individual's insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

Jacque Boyle (oral): Jacque Boyle, Public Works Director. There is a few things. As far as submitting insurance, we do get notification that insurance has, needs to be renewed for each employee that has a driver's requirement, personal driver's requirement. Unfortunately, there are instances that can occur where the employee then terminates the insurance and there is really no way for us to follow-up on that. So, I'm not sure what we can do, I don't think I can call the insurance company and say is this still in effect. So, so what they are doing is getting insurance, submitting the paperwork that's good for six months, but they could actually cancel it the next day.

Barbara Kolitsch (written): Employees have lapse of insurance, and supervisors don't consistently deal with lapse. A lapse today should result in suspension of certification, and today, some are not held accountable. It's difficult to track an employee who may drop insurance between coverage periods and pick up a new company, which will not show coverage. My only recommendation is for employees to somehow show continuation of coverage when they change insurance companies. Some supervisors aren't following up to ensure their employee has the required insurance prior to the employee continuing to drive.

Response

The commenters express concern that an employee can obtain insurance to become a certified driver, but then immediately cancel the insurance and the supervisor would not know.

The Law requires that an individual maintains minimum insurance requirements for a personal vehicle if that individual may use his or her personal vehicle to conduct official business. [2 O.C. 210.4-2(f)]. An individual is required to provide his or her insurance information to the Human Resources Department. [2 O.C. 210.4-3(a)]. A supervisor is required to ensure that the individual has received his or her driver certification from the Human Resources Department before the supervisor can allow the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4]. If an individual does not maintain the minimum insurance requirements for a personal vehicle then a supervisor may take disciplinary action against that individual. [2 O.C. 210.8-7(e)]. A supervisor who fails to ensure that his or her employee has received driver certification from the Human Resources Department prior to allowing that employee to drive a fleet vehicle or a personal vehicle on official business is also subject to disciplinary action for failing to comply with a provision of this law. [2 O.C. 210.8-7(a)].

Since the Law already requires that an individual maintain the minimum insurance requirements on a personal vehicle if that individual is going to use his or her personal vehicle to conduct official business, and allows for discipline if an individual or supervisor is not complying with the provisions of the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. Although the Legislative Operating Committee understands the burden in properly tracking if insurance requirements are met, the Law already requires that an individual maintain the minimum insurance requirements on a personal vehicle if that individual is going to use his or her personal vehicle to conduct official business, and allows for discipline if an individual or supervisor is not complying with the provisions of the Law.

Comment 14 – Referral to EAP:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Barbara Kolitsch (written): Referral to EAP (210.8(a). I'm unsure the value of this referral. There's an EAP policy, DOT policy, DAFWP policy – all which spell out reasons/ways to do an EAP referral. This isn't value-added in the Vehicle Driver/Fleet law. Please contact me if you have any questions regarding my comments. Thank you!

Response

The commenter states that she does not think there is value in including section 210.8-2(a) of the Law because it is duplicative of provision in other laws that more clearly detail when a referral to the Employee Assistance Program should occur.

Section 210.8-2(a) of the Law provides that a supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

The commenter is correct that other laws of the Nation provide when it may be necessary to refer an employee to the Employee Assistance Program. For example, the Drug and Alcohol Free Workplace law provides that an employee that engages in prohibited behavior, such as being under the influence of prohibited drugs and/or alcohol while on duty, for the first time shall be removed from duty without pay and shall receive a mandatory referral to the Employee Assistance Program for an assessment. [2 O.C. 202.11-5(a)(1)].

Although section 210.8-2(a) may be duplicative of requirements of other laws of the Nation, it serves as a notice or reminder to a supervisor that may be reviewing this Law that other laws of

the Nation may require a referral to the Employee Assistance Program for the individual's violation in conjunction with any consequences that result from this Law.

Whether or not to include section 210.8-2(a) in the Law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and include section 210.8-2 in the Law as a notice to supervisors of the responsibility to refer an employee to the Employee Assistance Program in accordance with other applicable laws of the Nation.
2. The Law should be revised to remove section 210.8-2(a) due to the fact that it is duplicative of other laws of the Nation that more clearly detail when a referral to the Employee Assistance Program should occur. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

~~(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.~~

LOC Consideration

The Legislative Operating Committee ultimately determined that although other laws of the Nation provide more details on when a supervisor can refer an employee to the Employee Assistance Program, section 210.8-2(a) should remain in the Law as it provides notification and a reminder that the supervisor can, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

The Legislative Operating Committee directed that the following revision should be made to the wording of section 210.8-2(a) to make the provision easier to understand:

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

- (a) A supervisor ~~shall, when necessary,~~ **may** refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Comment 15 – Approval of Authorized Passengers:

210.6. Fleet Vehicles

210.6-7. Authorized Passengers. In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(c) Any other individual who is authorized to be a passenger by the Fleet Management Department.

Jacque Boyle (oral): Another item is in the law it says that Fleet Management needs to authorize all passengers or individuals that may not be employees, that's going to be very hard for us to administer. So I think that should be approved by the supervisor and area manager of whose using the vehicle. So, especially for Recreation or different, you know, events, we would have a hard time identifying each and every individual in the vehicle.

Response

The commenter provides that it would be difficult for the Fleet Management Department to provide the necessary authorization for passengers in fleet vehicles, and this responsibility would be better handled by supervisors who would have better knowledge of the appropriateness of authorizing an individual to be a passenger.

The Law provides that in addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- a person being transported as part of a program or service of the Nation;
- a person being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- any other individual who is authorized to be a passenger by the Fleet Management Department.

[2 O.C. 210.6-7(a)-(c)].

Which department to delegate the authority to authorize a passenger of a fleet vehicle to is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee can make one of the following determinations:

1. The Law should remain as currently drafted and require that any additional passengers receive authorization from the Fleet Management Department.
2. The Law should be revised so that it is the supervisor of the individual, and not the Fleet Management Department, that provides authorization for additional passengers. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.6-7. Authorized Passengers. In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the employee, elected or appointed official, or volunteer's supervisor~~Fleet Management Department.~~

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised so that it is the supervisor of the individual, and not the Fleet Management Department, that provides authorization for additional passengers. The Legislative Operating Committee believes that the Fleet Management Department is responsible for ensuring the fleet vehicles are properly managed and maintained, but that it is the supervisor of an individual who will have more firsthand knowledge on whether a passenger is appropriate or not.

The Legislative Operating Committee is interested in pursuing the idea of requiring passengers of fleet vehicles who receive authorization by a supervisor to sign a waiver of liability, in another effort to minimize the risk and liability of the Nation.

The Legislative Operating Committee directed the following revision be made to the Law:

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the supervisor of the employee, elected or appointed official, or volunteer. ~~Fleet Management Department.~~

Comment 16 – Suspending Driver Certification as a Result of a Motor Vehicle Crash:

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

- (a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action based on the motor vehicle crash or incident resulting in damage to a vehicle.
- (b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.
- (c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:
 - (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
 - (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

Jacque Boyle (oral): And I do want to reiterate what Barb said as far as managing the training. I think that if there is an incident, that that training should be required, especially if it's repetitive. We do have a lot of specialized vehicles for snow removal and the current policy says that if there is an incident, Risk Management, the Fleet Manager, HRD investigate and make a

recommendation and typically it is to remove their driving privileges. If we did that, in order to do the job that's required, that would mean we would have to put someone untrained in that vehicle, untrained on the route to take care of that job for the five days, ten days or fifteen days, I don't think that's sending the right message either. It also encourages employees not to report, because they know there's some negative consequences, but actually if we address it through training, especially if it's, you know, multiple incidents, and I'm talking about fender benders, not very serious accidents, that the training would actually help them to drive better.

Response

The commenter expresses support for the earlier comment that mandatory training should occur when an employee has an at-fault accident or receives a moving violation while on duty, instead of requiring it for all certified drivers of the Nation on a triennial basis.

The commenter also discusses a situation that arises under the currently effective law, where when conducting an internal review of a motor vehicle crash, the Fleet Management Department and the Risk Management Department may recommend that the individual who is involved in a motor vehicle crash has his or her driver certification suspended. [BC-06-28-17-C – 2 O.C. 210.9-4(a)(2)]. The commenter provides that suspending the driver certification of an individual involved in a motor vehicle crash results in someone who may not have the proper training or familiarity being put into that vehicle for work until the original individual has completed his or her suspension, and also results in employees not reporting motor vehicle crashes or damage to a vehicle in fear of having his or her driver certification suspended.

The proposed amendments to the Law handle the suspension of driver certification in a different manner than the current Law. Under the proposed amendments to the Law, an individual's driver certification shall only be suspended when the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason. [2 O.C. 210.8-2]. For other violations of the Law, a supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation. [2 O.C. 210.8-7]. Disciplinary action can be taken against an individual for any of the following actions:

- Failing to comply with any provision of this law;
 - Failing to complete any applicable driver training requirements;
 - Driving a fleet vehicle without being certified under the provisions of this law;
 - Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and
 - Not maintaining the minimum insurance requirements for a personal vehicle.
- [2 O.C. 210.8-7(a)-(e)].

The Law still requires that the Fleet Management Department and the Risk Management Department coordinate and conduct an internal review for a motor vehicle crash or damage to a vehicle involving a fleet vehicle or a personal vehicle that as driven while conducting official business. [2 O.C. 210.7-2]. But, since the suspension of driver certification only occurs when an individual has his or her driver's license suspended or revoked by the State, if an individual is

involved in a motor vehicle crash or a situation involving damage to a vehicle that did not result in the suspension or revocation of the individual's license, then the Fleet Management Department and Risk Management Department will no longer recommend suspension of driver certification as a result of the internal review, but can recommend disciplinary action be taken. [2 O.C. 210.7-2(a)].

Since the commenter's concerns of suspending the driver certification of an individual who is involved in a motor vehicle crash or damage involving a vehicle is already addressed through the proposed amendments to the Law, and the Legislative Operating Committee has already been asked to consider mandatory training requirements for those involved in an at-fault accident or moving violation while on duty, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

Comment 17 – Use of GPS Equipment to Monitor Drivers:

Jacque Boyle (oral): We are, in conjunction with that, we are looking at implementing a GPS system throughout the fleet vehicles, so that it will give feedback on how that driver is doing. Hard braking, speeding, where they've been and we're getting very close to implementing a contract with a vendor and starting out with some of the vehicles. So, two things, it will allow the vehicle to last longer and hopefully give us feedback on how that driver is performing. That's all I have.

Response

The commenter provides the Legislative Operating Committee with information that the Department of Public Works is currently working on implementing a GPS system throughout fleet vehicles that will help monitor the driving of employees of the Nation.

Since this is just information being provided regarding the implementation of GPS equipment in fleet vehicles, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 18 – Compliance with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Background. The Oneida Nation (Nation) has entered into a Compact and Funding Agreement with the US Department of Interior (DOI) since 1994. In accordance with Section 20 of the Nation's current Funding Agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to that of the

DOI's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary. In addition, the Nation agrees to comply with Executive Order 13513 pursuant to the current Funding Agreement. Below you will find the Section 20 of the Funding Agreement in verbatim. Attached is the May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513 for your reference.

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513.

Since this information is being provided to the Legislative Operating Committee for information purposes and to serve as a reminder of the requirements of the Nation's Compact and Funding Agreement with the U.S. Department of Interior, there is no revision to the Law recommended on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 19 – Conflicts with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Section 20 Motor Vehicle Operation Policy - The Tribe certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operation of motor vehicles while performing duties to implement the terms of the Agreement. The Tribe's policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The Tribe's policy includes compliance with Executive Order 13513 prohibiting texting while driving.

There may be areas where the proposed law and BIA Motor Vehicle Operation Policy conflict. In order to avoid compromising the Nation's funding agreement, the LOC may want to consider making changes to the proposed law to align with the BIA Policy or insert language in the proposed law that states that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

It should be noted that the following programs, services, functions, and activities are currently found within the Nation's BIA funding agreement; however, this is likely to change once the Nation negotiates a new funding agreement by the end of CY 2021.

Administrative Direction

Safety Management

A good mind. A good heart. A strong fire.

Rights Protection
Aid to Tribal Government
Law Enforcement
Facilities Management
Economic Development
Housing Improvement Program
Road Maintenance
Community Fire Protection
Agriculture
Real Estate Services
Real Estate Appraisals
Environmental Quality

Forestry Management
Wildlife Management
Indian Child Welfare
Services to Children, Elderly, and Families
Welfare Assistance
Education (Scholarship, Adult Education)
Employment Assistance
Johnson O'Malley
Litigation Support
Fish Hatchery
Water Management
Hunting and Fishing Rights

There are some areas within the Nation that contribute to the operation of but are not identified as compacted programs, services, functions, and activities. The Nation receives contract support costs for these types of positions. It is unclear whether and under what circumstances the Department of Interior would consider driving to be part of an employee's performance of duties to implement the Compact on the basis of the Nation's receipt of contract support costs.

Please let me know if you have any questions.

[See Attached May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513]

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513. The commenter then goes on to provide that there may be areas where the proposed Law and the Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy conflict. In an effort to avoid compromising the Nation's funding agreement, the commenter recommends that the Legislative Operating Committee consider revising the Law to be consistent with the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy, or include a provision in the Law that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

When drafting the amendments to the Law the Legislative Operating Committee was not aware of the Nation's agreement to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and comply with Executive Order 13513. Now that the Legislative Operating Committee has been made aware of this obligation and potential for conflicts, the Legislative Operating Committee will have to determine how to move forward.

An example of a conflict that may exist between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy exists in how drug and/or alcohol related offenses are handled when determining if an individual is eligible for driver certification. The Law provides that a person shall not be eligible for driver certification if the individual has a driving record that demonstrates an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. On the other hand, Section II.D. of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy provides that in order to be authorized to drive on official business an employee must have no convictions or uncontested citations within the three (3) year period immediately preceding their submittal of GTA Form 3607, Motor Vehicle Operator's License and Driving Record, for reckless driving, driving while intoxicated (DWI), driving under the influence (DUI), or leaving the scene of an accident.

The Legislative Operating Committee has to make a decision on how to handle the potential conflicts between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy. The Legislative Operating Committee may make one of the following determinations:

1. Direct that a comprehensive analysis of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy is completed and includes a comparison with the Law to identify any potential conflicts, and then deter this item to a work meeting to consider revisions to the Law that would eliminate such conflicts.
2. Revise the Law so that it includes a provision that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to compliance with the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent. If the Legislative Operating Committee makes this determination, then it is recommended that the Legislative Operating Committee direct the Human Resources Department and the Self Governance Department to collaborate to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and then the following revision is recommended:
210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include an exemption which will address all current and future employees whose duties with respect to implementation of the Compact include driving and therefore may be subject to compliance with the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

The Legislative Operating Committee determined that it is important to identify the specific employees who may have to follow the BIA Motor Vehicle Operation Policy, so it is clear which employees are subject to the Nation's Law and which employees are required to follow a stricter policy. The Legislative Operating Committee intends to direct the Human Resources Department to work with the Self Governance Department to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and to update the job descriptions so that it is clear which driving policy is applicable. The Legislative Operating Committee also intends to direct that a comprehensive analysis of Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy is completed and includes a comparison with the Law to identify where this Law is less strict.

The Legislative Operating Committee directed the following revision be made to this Law based on this comment:

210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.