

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

Clearinghouse Rule 14-031

The State of Wisconsin Department of Transportation Proposes an Order to Create Permanent Rule Wisconsin Administrative Code ch. Trans 327.14 Relating to Motor Carrier Safety and affecting small businesses.

The Statement of Scope for this Permanent Rule, SS 012-11, was approved by the Governor on August 16, 2011, published in Wisconsin Administrative Register No. 669 on September 15, 2011, and approved by the Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by Wis. Stat. s. 227.135(2), on September 26, 2011.

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Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Wis. Stat. ss. 343.02(1), 343.06 (3), 343.065 (3), 343.14 (2) (i) 1., 343.23 (2) (a), 343.265 (1r), and 343.27.

Statutory authority: Wis. Stat. s. 343.065 (3).

Explanation of agency authority: Current law requires the Department to administer the driver license law for commercial motor vehicles contained in ch. 343, Wis. Stats. The state has declared its purpose and intent to implement and enforce the federal driver license laws so as to ensure receipt by this state of any federal highway aids. Federal law requires states to conform to federal regulations affecting commercial motor vehicles and their drivers, or face withholding of federal highway funds. See 49 CFR 384.401. The amounts to be withheld from a state that fails to

conform to federal regulations affecting commercial motor vehicles or their drivers are 5% of federal highway aid for the first year of substantial nonconformity, and 10% per year of nonconformity thereafter. Current Wisconsin law also requires Department rules affecting driver licenses not to conflict with, and be at least as stringent as, standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act.

On December 1, 2008, the federal motor carrier and safety administration ("FMCSA") issued its final rule concerning "Medical Certification Requirements as Part of the CDL [Commercial Driver License]" at 73 Federal Register 73096. Among other changes, the federal regulation requires commercial motor vehicle drivers to declare whether they intend to engage in driving operations that require the driver to maintain proof of medical examination showing the driver meets fitness qualifications, and requires the state driver licensing agency to 'downgrade' the CDL of any driver that fails to timely make that certification or to maintain that proof on file. In response, Wisconsin enacted conforming statutory requirements as part of 2011 Wisconsin Act 32 (the 2011-13 biennial budget act), and required the Department to do all of the following: promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency; establish the process for downgrading a CDL, and whether or not a new CDL document will be issued after a CDL is downgraded; and establish the process for reinstating a downgraded CDL after the Department receives a valid medical certification or other appropriate certification of physical qualifications from the licensee. See s. 343.065 (3), Stats.

This rulemaking implements s. 343.065 (3), Stats. The objective of this rule is to: implement federal requirements for commercial drivers to declare their intended driving

type; obtain from drivers federally required medical examiner's certificates to the Department; electronically enter the driver's self-certification of driving type and the status of their federal medical examiner's certification online for access by the driver, employers and other states; and for the Department to timely make those certificates available for inspection by other states in which the driver may drive.

Related statute or rule: See the "Statutes interpreted" section; chs. Trans 112 and 327, Wis. Adm. Code.

Plain language analysis: This proposed rule-making would bring Wisconsin into conformity with federal regulations requiring that commercial drivers certify where they drive in commerce ("Tier of Operation"), and require drivers engaged in non-excepted interstate commerce to keep a valid federal medical certificate on file with the licensing state. The federal medical examiner's certificate ("FedMed Card") is proof of a qualified medical examination that determined the driver meets federal medical qualifications for operating a commercial motor vehicle. This rule does not change the requirements for when commercial drivers must hold a valid FedMed Card. Specifically, under this rule-making:

- All commercial drivers must certify their Tier of Operation to the Department. This may be: 1) interstate non-excepted (Tier 1); 2) interstate excepted (Tier 2); 3) intrastate non-excepted (Tier 3); or 4) intrastate excepted (Tier 4). Drivers can make the certification by mail, fax, online or by email, using a computer or a Smartphone, or at a Division of Motor Vehicles ("DMV") service center.
- All commercial drivers certifying their Tier of Operation as Tier 1 must file a FedMed Card with the Department, and keep it up-to-date. Drivers can file FedMed Cards by mail, fax, online or by email, using a computer or a Smartphone, or at a DMV service center.
- The Department will update that commercial driver's record shown on the Commercial Driver License Information System (CDLIS) within 10 days, showing the self-certified Tier of Operation and whether the driver has filed any required FedMed Card or medical variance.

- The Department will “downgrade” the CDL of any commercial driver who: 1) Self-certifies himself or herself as a Tier 1 driver and does not provide a valid FedMed Card; or 2) Is a Tier 1 driver whose FedMed Card is expired, or is removed or rescinded by FMCSA. Federal regulations require downgrading for these reasons. The Department will “downgrade” the CDL by removing the CDL privilege from the holder’s driver’s license, and the driver cannot drive commercial motor vehicles again until he or she certifies a tier of driving other than Tier 1, or submits a valid FedMed Card or medical variance. The driver may reinstate the CDL privilege without additional testing by correcting the cause for the downgrade.
- The Department will notify commercial drivers by mail or another method, and notify enrolled employers through Employer Notify, at least 55 days before a FedMed Card filed with the Department expires, upon expiration of that FedMed Card, and immediately upon downgrade.
- Drivers will be able to use the online application – and employers who have signed up to use Employer Notify will be able to use Employer Notify – to verify: downgrade or reinstatement of commercial privileges; tier of operation; and, for Tier 1 drivers, the expiration date of FedMed Cards.
- Fraudulent FedMed Cards – whether presented online, in a DMV field station, or at a safety and weight enforcement facility operated by the Division of State Patrol scale – will be considered a false application and treated accordingly.
- If future federal rule-making provides FedMed information directly to states, then commercial drivers are required to certify only their Tier of Operation, but not necessarily provide a copy of a current FedMed Card to the Department.

Summary of, and preliminary comparison with, existing or proposed

federal regulation: This rule-making implements the final federal regulations concerning, “Medical Certification Requirements as part of the CDL” at 73 FR 73096 (Dec. 1, 2008). The rulemaking is intended to ensure Wisconsin’s conformity with federal regulations in 49 CFR Part 383 and 391, requiring drivers of commercial motor vehicles to certify their type of driving to the Department and submit a copy of their federal medical certificate to the Department. All states are required to comply with these regulations.

Comparison with Rules in the Following States: The four states bordering

Wisconsin all have requirements in place similar to those proposed in this rule. Specifically, all four states: require all CDL holders to certify their commercial driving as one of four types specified in federal law; require those drivers certifying their driving as 'non-excepted interstate' to provide and maintain on file with the state driver licensing authority a valid federal medical certification or medical variance; 'downgrade' a CDL by removing all commercial driving privileges, for all commercial drivers that do not complete the self-certification or do not provide the federal medical certificate; and reinstate the downgraded driver that self-certifies a driving type other than non-excepted interstate, or provides a federal medical certification or medical variance. Iowa alone allows a grace period of 60 days after federally required deadlines before downgrading a CDL for noncompliance.

Illinois. Illinois administrative code requires all CDL holders on or after January 30, 2012, to self-certify one of four types of driving before January 30, 2014. Failure to self-certify will result in cancellation of the CDL privileges. Drivers who certify their driving as non-excepted interstate driving must submit and maintain on file a medical examiner's certificate and, if appropriate, a medical variance issued by the federal motor carrier safety administration (FMCSA). The removal of privileges remains in effect until the driver provides valid federal medical certification or medical variance, or certifies that the driver is not engaged in non-excepted interstate driving. These provisions of Illinois law are found at 92 Ill. Admin. Code 1030.22.

Iowa. Iowa requires all CDL holders to self-certify the type of commercial driving as one of four types, not later than January 30, 2014. Drivers who certify their operations as non-excepted interstate must provide the Department of Transportation a valid federal medical examiner's certificate. Iowa law prevents the licensing of any

applicant for initial or renewal of a CDL who does not self-certify their driving or does not provide a federal medical certificate. Iowa law requires the downgrade of any driver certified as non-excepted. Iowa deems a CDL expired upon the expiration of a federal medical certificate, and 60 days thereafter will entirely remove the commercial driving privileges if the driver does not provide an updated federal medical certificate or self-certifies a type of driving other than non-excepted interstate. Similarly, Iowa does not remove the driving privileges from a driver who fails to make that self-certification until 60 days after that deadline. Drivers who are downgraded may reinstate a CDL by providing a valid federal medical certification or medical variance, or by self-certifying as driving something other than non-excepted interstate. These provisions of Iowa law are found at Iowa Admin. Code 761-607.50(321), and Iowa Statute at 321.182 and Iowa Code Supplement at 321.188 and 321.207.

Michigan. Michigan requires all CDL holders to declare one of four types of driving, and requires driver's who certify their driving as "non-excepted interstate" to provide a valid federal medical examiner's certificate. Michigan will remove all commercial driving privileges from the driver license if a driver fails to certify the type of driving or fails to provide and maintain a valid medical examiner's certificate. Although the Department was unable to find Michigan statutes or administrative code provisions related to this, the Michigan Secretary of State's website includes FAQs that describe the process summarized above, at: <http://www.michigan.gov/sos> under the heading "Commercial Drivers - Self and Medical Certification". According to the Michigan Secretary of State website, "You will lose your privilege to operate a CMV if you fail to provide a self-certification to the Secretary of State's Office before your CDL expires or by January 30, 2014, whichever date comes first." and "If you self-certify as a non-

excepted interstate driver, you must present a completed and signed Medical Examiner's Certificate, which is also known as a DOT Medical Card, to the Secretary of State to continue your CDL application.”

Minnesota. Minnesota statutes require CDL applicants to self-certify one of four types of driving and, if required by federal law (i.e. certifies as a non-exempt interstate driver) to provide and maintain with the driver licensing authority a valid federal medical examiner’s certificate. Minnesota downgrades the commercial driving privileges of any driver who has certified himself or herself as being required by federal law to provide a federal medical examiner’s certificate, unless within 30 days following written notice to the driver that the medical examiner’s certificate is expired, the driver self-certifies as not engaged in non-exempt interstate driving, or provides the required a federal medical examiner’s certificate or medical waiver. Minnesota accomplishes the downgrade by removing the commercial driving privileges from the person’s driver license. These provisions are found at Minnesota Statutes Annot. 171.162. Minnesota administrative rules allow a downgraded CDL driver to reinstate commercial driving privileges within one year or less by submitting a valid federal medical certificate or by self-certifying as driving in something other than non-excepted interstate driving. However, if the commercial driving privileges are downgraded for more than one year the CDL driver must apply as a new CDL applicant and retake the knowledge and driving skills tests. These provisions are found at Minnesota Admin. Code 7421.0800.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Wisconsin considered several options for implementing this federal rule: require all commercial drivers,

regardless of their Tier of Operation, to keep a current FedMed Card on record with the Department; require that certification or provision of FedMed Cards could only be done in DMV service centers, or only online; require downgraded drivers to appear at DMV service centers to reinstate or repeat some or all of the CDL licensing process. The current approach was selected because it is the most flexible and driver-friendly, yet still meets the letter and spirit of the federal requirements.

Analysis and supporting documentation used to determine effect on small businesses: This rule-making will have a minor fiscal impact on independent truckers and small trucking companies. The new burdens placed on drivers include having to declare a type of operation to the Department and, for drivers that declare themselves to be engaged in non-excepted interstate travel, to file and maintain a FedMed Card with the Department. FMCSA estimates that 74% of all CDL holders are engaged in non-excepted interstate commerce. Neither the federal regulations nor this rulemaking change the requirements that drivers engaged in non-excepted interstate commerce maintain a FedMed Card on their person when driving a CMV in interstate commerce, so the burden of this rule is largely a reporting burden. However, this rule will simplify the process of drivers providing proof of a FedMed Card, as the federal regulations will make this information available to all employers, drivers and states through a national database, CDLIS. The Department has minimized the driver's compliance costs in a variety of ways.

Effect on small business: The Department has attempted to identify flexible and business-friendly methods of implementing and enforcing this rule, and has included them in this rule. The Department expects the long-term effect on small business to be relatively minor. The requirements of self-certifying a CDL driver's Tier of Operation, and of Tier 1 drivers maintaining valid FedMed Cards with the Department, will be jointly

enforced by the Division of State Patrol (through implementation of the federal motor carriers safety regulations) and by DMV. Commercial drivers and trucking companies will need to ensure that they and their drivers have certified their Tier of Operation, and that Tier 1 drivers have a current FedMed Card on file with the Department. FedMed requirements remain unchanged. There is no fee to: 1) certify a Tier of Operation; 2) change a certification at any time to another Tier of Operation; 3) provide a FedMed Card; 4) verify one's own Tier of Operation or the expiration of a FedMed Card; or 5) reinstate a CDL after being downgraded. Employers and drivers can check a driver's status online or through employer notification, for no charge. Both drivers and employers are notified 60 days before expiration of a FedMed Card, upon expiration and, if the driver does not provide a new, valid FedMed card or declare a tier of driving other than 'non-excepted interstate', upon downgrade. The Department has been providing outreach to individual drivers and to trucking companies to inform them of these new requirements, and will continue to do so.

Fiscal effect: This rule imposes costs in two ways. First, applicants for a CDL are now required to self-certify the type of driving in which they intend to engage. The Department estimates that this part of the application process can be completed in less than one minute.

Next, drivers who certify that they engage in non-excepted interstate commerce will be required to file proof of their FedMed Card with the Department, and to refile proof at least once every two years when the FedMed card expires. The Department believes this can be done in conjunction with the self-certification process, or separately, in no more than five minutes per driver.

The Department has implemented the provisions of this rule since February 16,

2014, so all CDL holders have already made the certifications required under this rule and filed FedMed Cards as required, or have been downgraded. In December 2012, there were 299,221 CDLs issued by this state, of which 235,808 were valid and 63,413 were withdrawn or expired. Assuming for purposes of estimating the greatest impact that each of 299,221 CDL holders will comply, and that each driver spends five minutes complying with the self-certification requirements of this rule, the aggregate compliance time was 24,935 hours. CDLs are valid for eight years, so assuming an even rate of CDL issuance and renewals, the aggregate compliance time may be 3,116 hours per year statewide. FMCSA estimates that 74% of CDL holders engage in non-excepted interstate commerce [See, 71 FR 66743 (Nov 16, 2006)]. If that is correct, as many as 221,423 drivers will also be required to file FedMed Cards with the Department. If compliance takes five minutes to file a FedMed Card, the aggregate time spent on initial compliance may be 18,451 hours. The FedMed Card is generally valid for two years, but drivers with specific medical conditions may require more frequent medical fitness certification (for example, a FedMed Card for a driver with the following diagnoses is valid for one year: high blood pressure, heart disease, diabetes and vision exemption or waiver programs). Assuming that each FedMed Card is valid for two years, the aggregate annual time spent on compliance may be 9,226 hours. Taken together, the aggregate time spent to self-certify (3,116 hours) and file FedMed Cards (9,226 hours) could be 12,342 hours annually.

This rule requires the Department to enter the self-certification on the CDLIS driving record of each driver. If each record entry can be completed in two minutes, the aggregate time to enter may be 1,246 hours, or 0.6 FTE. This figure assumes only one entry per driver every eight years, which will increase if drivers change their self-certified

type of driving during the eight-year CDL duration.

The rule also requires the Department to record on the CDLIS driving record each FedMed Card it receives. If each record entry can be completed in two minutes, the aggregate time to complete those entries is 7,977 hours every two years, or 3,989 hours per year, or 1.9 FTE.

In all, it appears the Department will require 2.5 FTE annually to complete the work required by this rule. The Department will incur ongoing costs to provide written notices to drivers that: 1) a FedMed card will expire within 60 days; 2) that a FedMed Card has expired; and 3) that a CDL is downgraded. It is unknown how many of the estimated 239,336 non-excepted interstate drivers will require these notices from the Department, but these notices could be required for each driver every two years to coincide with the valid period of a FedMed Card. If 10% of all estimated 221,423 drivers required to file FedMed Cards require all three notices every two years the Department will mail 33,213 notices per year as result of this rule. If half of those drivers have employers on file, mailing those notices to employers will require an additional 16,606 mailed notices.

On March 11, 2014, the Department solicited information and advice as required under s. 227.137, Stats., and Executive Order #50, to help prepare this economic impact analysis. The Department has solicited information and advice from six individuals who hold CDL's, from around the state and engaged in both interstate and intrastate driving operations, and from all members of the Department's standing Motor Carrier Advisory Committee. The motor carrier advisory committee consists of six members, including: three trucking company representatives; one representative of a corporation specializing in motor carrier driver and fleet management and regulatory

compliance; one citizen; and the Wisconsin Motor Carriers Association, a non-profit trade association representing the interests of truck and motor coach owners within the state of Wisconsin, and having 1,050 members ranging from independent contractors with one truck to companies with thousands of trucks, and affiliated with the American Trucking Associations (ATA) in Washington. The comment period remained open until April 5, 2014, and the Department received no comments responding to the solicitation. In addition, the Department promulgated Emergency Rule Trans 327 (EmR1404) on February 16, 2014, that implements all of the requirements of this proposed rulemaking, and received no comments in response to that emergency rule. The Department promulgated Emergency Rule Trans. 327 (EmR1426) on December 4, 2014, which implements all of the requirements of this proposed rulemaking, and received no comments in response to that emergency rule, which remains in effect until July 1, 2015.

Anticipated costs incurred by private sector: See the discussion above for the anticipated time required to comply with this rule. The Department has identified flexible and business-friendly methods of implementing and enforcing this rule. As with small businesses, the Department expects compliance with this rule to take no more than ten minutes per driver, at no charge by the Department, so overall costs incurred by the private sector are believed to be minimal per driver, and are the consequence of federal regulations. All commercial drivers and trucking companies will need to ensure that they and their drivers have certified their Tiers of Operation and that Tier 1 drivers have a current FedMed Card on file with the Department. FedMed Card requirements remain unchanged. There is no charge by the Department to a driver to certify a Tier of Operation, to change one's Tier of Operation at any time, to provide a FedMed Card, to

verify a Tier of Operation or the expiration of a FedMed Card, or to reinstate a CDL after being downgraded. Drivers and employers can verify a driver's status online or through employer notification, free of charge. Both drivers and employers are notified 60 days before expiration, upon expiration and upon downgrade. The Department is also providing outreach to individual drivers and to trucking companies.

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TEXT OF PERMANENT RULE

SECTION 1. Trans 327.14 is created to read:

Trans 327.14 Medical Certification Requirements as Part of the Commercial Driver License. (1) PURPOSE. As authorized by ss. 343.02(1), 343.06 (3) and 343.065 (3), Stats., this section establishes the processes for a CDL holder to certify the appropriate type of driving in accordance with 49 CFR 383.71 (2012) and to provide any federal medical certificate required by 49 CFR 391.45, and for the department to downgrade the CDL of any person who does not make that certification or who does not provide or maintain in effect a medical certificate as required by 49 CFR 383.73. This

section also establishes the process for reinstating a downgraded commercial driver license.

(2) DEFINITIONS. In this section:

(a) “CDL” means a commercial driver license.

(b) “Commercial learner’s permit” means a permit issued to an individual by this state or other jurisdiction that, when carried with a valid driver’s license issued by the same jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a commercial learner’s permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder’s current CDL is not valid.

(c) “Downgrade” means to remove a person’s privilege to operate commercial motor vehicles from a person’s CDL by indicating on the person’s driving record that all commercial vehicle classes and endorsements, other than an “H” endorsement, are voluntarily surrendered. “Downgrade” with respect to an “H” endorsement means suspension of the “H” endorsement.

(d) “Driving record” means the record under s. 343.23 (2) (a), Stats.

(e) “H” endorsement” means the hazardous materials endorsement described in s. 343.17 (3) (d) 1m., Stats.

(f) “Medical certificate” means a completed, unexpired medical examiner’s certificate issued in accordance with 49 CFR 391.43 (2012), on a form approved by the department, stating that the person is physically qualified under 49 CFR 391.41 (2012) to drive a commercial motor vehicle, together with any medical variance described in 49 CFR 390.5 and required under 49 CFR 383.73 (o) (2012).

(g) "Tier 1 driver" means a person who certifies as Tier 1 under sub. (3) (b) 1.

(3) SELF-CERTIFICATION OF THE TYPE OF DRIVING TO BE DONE. (a) A person applying for a CDL shall certify to the department the tier of operation in which he or she intends to engage. A person may change his or certification at any time. The department shall deny as incomplete an application for any of the following that is submitted without a certification required under this subsection or a required medical certificate:

1. A commercial learner's permit.
2. An initial commercial driver's license.
3. A transfer of a commercial driver's license from another jurisdiction to this state.
4. Renewal of a commercial driver's license.
5. A license upgrade authorizing the operation of a vehicle group not authorized on the prior commercial driver license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license.

(b) A person may certify one of the following tiers of operation under this subsection:

1. **Tier 1, or non-excepted interstate.** Tier 1, or non-excepted interstate, means the person operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391 (2012), and is required to obtain a medical examiner's certificate by 49 CFR 391.45 (2012).

2. **Tier 2, or excepted interstate.** Tier 2, or excepted interstate, means the person operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations that are excepted by 49 CFR 390.3(f), 391.2, 391.68, or 398.3 (2012) from all or parts of the qualification requirements of 49 CFR part 391

(2012), and is therefore not required to obtain a medical examiner's certificate by 49 CFR 391.45 (2012).

3. **Tier 3, or non-excepted intrastate.** Tier 3, or non-excepted intrastate, means the person operates only in intrastate commerce and therefore is subject only to state driver qualification requirements.

4. **Tier 4, or excepted intrastate.** Tier 4, or excepted intrastate, means the person operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(4) MEDICAL CERTIFICATE REQUIREMENTS. (a) No person may operate a commercial motor vehicle in non-excepted interstate or foreign commerce unless the person is certified as a Tier 1 driver, has provided a medical certificate to the department, and has verified that the department has recorded the certification and indicated the person's status as "Certified" on the person's driving record.

(b) A person who certifies himself or herself as a Tier 3 driver is subject to state driver qualification requirements and shall provide a medical certificate to the department when applying for initial issuance or renewal of a CDL and must possess a medical certificate whenever operating a commercial motor vehicle, but is not required to maintain a medical certificate on file with the department.

(c) A person who certifies himself or herself as Tier 4 driver is subject to state driver qualification requirements but is not required to provide a medical certificate to the department.

(d) A CDL holder who obtained a medical certificate required by 49 CFR 383.71 (h) with a medical variance from the federal motor carrier safety administration must have in his or her possession a copy of that medical variance documentation whenever

on-duty.

(5) DEPARTMENT RECORDS OF MEDICAL CERTIFICATE.

(a) Within 10 days after receiving a medical certificate from a Tier 1 driver the department shall record the certification on the person's driving record and shall record the person's status as "Certified", together with all required information from the medical certificate. The department shall then file the medical certificate of a Tier 1 driver and retain that medical certificate for at least 3 years after the date of the medical examination.

(b) If the federal motor carrier safety administration notifies the department that a CDL holder has been issued a medical variance, the department shall indicate the existence of the medical variance on the person's driving record, on the commercial driver license information system and on the CDL using the medical variance restriction code "V".

(c) Only the medical certificate relating to the most recent medical examination may be considered unexpired. The department shall consider any medical certificate relating to an earlier medical examination to be expired.

(6) DOWNGRADE PROCESS. (a) Notwithstanding Trans 112.16 (1) (c) and Trans 327.09 (2) (b), the department shall downgrade the CDL of any of the following:

1. A Tier 1 driver, upon the expiration of his or her medical certificate.
2. A Tier 1 driver, upon receiving notice that the federal motor carrier safety administration has removed or rescinded a medical certificate or medical variance relating to the driver.
3. Any person who fails to submit an updated medical certificate or to have a corrected CDL issued within 60 days after notification under sub. (8) (a) 4.

(b) If the department downgrades a CDL, the department shall do all of the following:

1. Record the downgrade on the person's driving record. The department may record as voluntarily surrendered any commercial vehicle classes or endorsements that are expired or are already suspended, revoked, cancelled, disqualified or otherwise withdrawn for another reason.

2. Record the person's medical certification status as "Not Certified" on the commercial driver license information system, if the person was last certified as a Tier 1 driver.

3. Notify the person as provided in sub. (8).

4. Complete the actions required under this paragraph within 60 days after the expiration of the medical certificate or the deadline for providing a medical certificate. The department shall record the entry required under this subdivision within 10 days after expiration of the medical certificate or receiving notice that a medical certificate or medical variance is removed or rescinded.

(c)1. A downgrade does not affect the operating privileges of any non-commercial vehicle classifications. A person whose CDL is downgraded under this subsection may retain an operator's license that indicates commercial driver classes and endorsement without making any physical alterations to that operator's license.

2. A downgrade under this subsection affecting an 'H' endorsement is considered suspension of that endorsement, not a voluntary surrender under s. 343.265 (1r), Stats. The department may not cancel an "H" endorsement under s. 343.265, Stats., as a result of a downgrade under this subsection.

(7) REINSTATEMENT. (a) A person whose CDL is downgraded may reinstate his or her CDL at any time prior to the CDL expiration date by making the certification required under sub. (3), or, if required, providing a medical certification, or both, or by changing his or her certification to something other than a Tier 1 driver.

(b) Reinstating a CDL that is downgraded has no effect on any suspension, revocation, cancellation, disqualification or withdrawal for another reason.

(c) The department may not charge a fee to reinstate a CDL that is downgraded, but may charge a fee to reinstate a CDL that is also suspended, revoked, cancelled, disqualified or otherwise withdrawn for another reason, or to change restrictions that require the issuance of a duplicate CDL.

(d) Upon reinstatement under this paragraph, the department shall record the reinstatement on the person's driving record and on the commercial driver license information system and shall make applicable record entries relating to the medical certification.

(e) Reinstating a CDL under this paragraph reinstates any endorsement, including an "H" endorsement, held at the time of voluntary surrender if the person otherwise remains eligible to hold those endorsements.

(8) NOTICES TO DRIVERS AND EMPLOYERS. (a) The department shall provide written notice to a Tier 1 driver of each of the following, as applicable:

1. The expiration date of his or her medical certificate; that the person may not operate in interstate commerce after the medical certificate expires; and that the person's CDL will be downgraded if he or she does not maintain a medical certificate on file with the department. Whenever practicable, the department shall provide notice under this subdivision at least 55 days before the expiration of the medical certificate.

2. That the person's medical certificate is expired, that the person is no longer certified to operate in interstate commerce, and that the person's CDL may be downgraded. The department shall provide notice under this subdivision upon expiration of the medical certificate.

3. That the department has downgraded the person's CDL and of how the person may reinstate his or her CDL. The department shall provide notice under this subdivision upon completing the downgrade.

4. That the federal motor carrier safety administration has notified the department that a CDL holder has been issued a medical variance and the most recent medical certificate on file with the department does not contain a medical variance. The notice shall require the driver to submit a current medical certificate reflecting the variance.

(b) The department may use the online method established under sub. (9) to provide written notices required under this subsection. The department shall use the employer notification system under s. 343.27, Stats., to inform an employer of any notice provided under par. (a) 1., 2. or 3., if at the time of that notice the employer is enrolled in the employer notification system and the affected driver is shown in that employer's list of enrolled drivers.

(9) DEPARTMENT ONLINE SERVICES. The department may maintain on its website a means for any person to make the certification required in sub. (3). The department shall maintain on its website a means for all of the following:

(a) For any person to verify the status of his or her CDL, including any authorized vehicle classes and endorsements.

(b) For any Tier 1 driver to submit an electronic copy of his or her medical

certificate.

(c) For any employer enrolled in the employer notification system established under s. 343.247, Stats., to verify its driver's current certified tier of operation and the expiration date of the medical certificate for its Tier 1 driver employees.

(d) For any Tier 1 driver to verify the department has completed the actions required in sub. (5).

(e) For any driver to confirm a downgraded CDL has been reinstated.

SECTION 2. EFFECTIVE DATE. This rule will take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.