

Clearinghouse Rule 14-031

**2PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to create TRANS 327.14, relating to motor carrier safety and affecting small businesses.

Analysis Prepared by the Wisconsin Department of Transportation

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

Statutory authority: ss. 343.065 (3), Stats.

Explanation of agency authority: Current law requires the Department of

Transportation 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 such certification or to maintain such 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 of Transportation to: 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 to 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 rule-making 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 state; 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:

- By January 30, 2014, 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 DMV service center.
- By January 30, 2014, all commercial drivers certifying their tier of operations 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) Does not certify his or her tier of operation by January 30, 2014; 2) Self-certifies himself or herself as a Tier 1 driver and does not provide a valid FedMed Card; or 3) Is a Tier 1 driver whose FedMed Card expires, 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, no more than 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 herein. Specifically, all four states: require all CDL holders to certify their commercial driving as 1 of 4 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, by January 30, 2014; 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, per. 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 that 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 or maintain. 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/0,1607,7-127-48296---F,00.html#5.1> 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 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 80% 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 certify a tier of operation; to change a certification at any time to another tier of operation; to provide a FedMed Card; to verify one's own tier of operation or the expiration of a FedMed Card, or; to 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 three 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 1 minute.

Next, the rule requires current CDL holders to self-certify the type of driving in which they intend to engage. Because certification by existing drivers will not be done in conjunction with a CDL application, the department estimates this will take approximately 5 to 10 minutes to complete.

Last, 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 2 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 5 minutes per driver.

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 5 minutes complying with the self-certification requirements of this rule, the aggregate compliance time will be 24,935 hours. CDLs are valid for 8 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 5 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 2 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 2 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 2 minutes, the aggregate time to enter may be 1,246 hours, or 0.6 FTE. This figure assumes only one entry per driver every 8 years, which will increase if drivers change their self-certified type of driving during the 8-year CDL duration.

The rule also requires the department to record on the CDLIS driving each FedMed Card it receives. If each record entry can be completed in 2 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 such notices from the department, but these notices could be required for each driver every 2 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 3 notices every 2 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 6 members, including: 3 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 remains open until April 5, 2014. As of today's date, March 28, 2014, the department has received no comments responding to the solicitation. Any comments received in response to the solicitation will be considered and addressed in the final rule along with any comments received at the forthcoming public hearing. In addition, the department promulgated Emergency Rule Trans. 327 on February 16, 2014, that implements all of the requirements of this proposed rulemaking, and has received no comments in response to that emergency rule.

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 10 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 tier 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.

Agency contact person and place where comments are to be submitted and deadline for submission: Comments may be submitted to the agency contact person that is listed below until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

Any such comments should be submitted to:

Alison Lebwohl
Bureau of Driver Services Section, Division of Motor Vehicles
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 809
P. O. Box 7995
Madison, WI 53707-7995
Phone: (608) 266-0054
E-mail: alison.lebwohl@dot.wi.gov

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF RULE RULE

SECTION 1. Trans 327.14 is created to read:

Trans 327.14 Medical Certification Requirements as Part of the Commercial Driver License. (1) DEFINITIONS. Words and phrases defined in ch. 340, Stats., have the same meaning in this chapter unless a different definition is specified. In this section:

- (a) “CDL” means a commercial driver license.
- (b) “CDLIS” means the commercial driver license information system established by federal motor carrier safety administration.
- (c) “CDLIS driver record” means the electronic record of the individual CDL driver’s status and history stored by the department and made accessible as part of CDLIS.
- (d) “Commercial learner’s permit” or “CLP” means a permit issued to an individual by this state or other jurisdiction, in 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 CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder’s current CDL is not valid.
- (e) “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.

(f) “Excepted” transportation or operations that are exempt from the medical qualifications in 49 CFR 391 (2012) by 49 CFR 390.3 (f), 391.2, 391.68 or 398.3 (2012) or intrastate transportation or operations that are exempt from the medical qualifications in 49 CFR 391 (2012) by Trans 327.03 (2) or by Trans 327.09.

(g) “FMCSA” means the federal motor carrier safety administration.

(h) “H endorsement” means the hazardous materials endorsement described in s. 347.17 (3) (d) 1m., Stats.

(i) “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 391.45 (2012) to drive a commercial motor vehicle, together with any medical variance required under 49 CFR 383.70 (o) (2012).

(j) “Non-excepted” means transportation or operations that are not excepted.

(k) “Tier 1 driver” means a person who certifies the type of driving operations in which he or she intends to engage as Tier 1 under sub. (3) (a) 1.

(2) PURPOSE AND SCOPE. As authorized by ss. 343.06 (3) and 343.065 (3), Stats., this section creates the administrative requirements for a driver to certify the appropriate type of driving in accordance with 49 CFR 383.71 (2012) and to provide any federally required medical certificate and establishes the process 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 the federally required medical certificate. This section also establishes the process for reinstating a downgraded commercial driver license.

(3) SELF-CERTIFICATION OF THE TYPE OF DRIVING TO BE DONE. (a) The following types of driving operations may be certified under this subsection:

1. **Tier 1, or non-excepted interstate.** Tier 1 means the person operates or expects to operate in non-excepted interstate or foreign commerce. A person who certifies his or her intended driving under this subdivision shall certify that he or she is subject to and meets the medical examination requirements under 49 CFR Part 391 (2012), shall provide a medical certificate to the department when applying for initial issuance of a CDL, and shall maintain a medical certificate on file with the department as provided in sub. (5).

2. **Tier 2, or excepted interstate.** Tier 2 means operating only in excepted interstate commerce and that he or she is not subject to the medical examination requirements under 49 CFR 391 (2012). A person who makes a certification under this subdivision is not required to provide a medical certificate to the department.

3. **Tier 3, or non-excepted intrastate.** Tier 3 means operating only in non-excepted intrastate commerce. A person who certifies his or her intended driving under

this subdivision is not subject to the medical examination requirements under 49 CFR 391 (2012) but 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.

4. **Tier 4, or excepted intrastate.** Tier 4 means operating only in excepted intrastate commerce. A person who certifies his or her intended driving under this subdivision is not subject to the medical examination requirements under 49 CFR Part 391 (2012), but is subject to state driver qualification requirements and is not required to provide a medical certificate to the department.

(b) 1. A person shall certify to the department one type of driving operations described in par. (a) in which he or she intends to engage, as part of the application submitted on or after January 30, 2012, for any of the following:

- a. An initial commercial driver's license.
- b. A transfer of a commercial driver's license from another jurisdiction to this state.
- c. Renewal of a commercial driver's license.
- d. 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.

Note: A person holding a CDL on January 29, 2012 that does not expire before January 30, 2014, is not required before January 30, 2014, to certify the type of driving in which he or she intends to engage. However, any person who certifies himself or herself as a Tier 1 driver and provides a medical certificate is immediately subject to the requirement to maintain a medical certificate on file with the department.

2. A person is only required to make the certification under this subsection once. A person may change his or certification at any time.

(c) Within 10 days after a certification under this subsection, the department shall record the certification on the person's driving record and on the person's CDLIS driver record.

(4) FAILURE TO CERTIFY OR PROVIDE MEDICAL CERTIFICATE. (a) The department shall deny as incomplete any application that is submitted on or after January 30, 2012, without a certification required under sub. (3) (b) or a required medical certificate.

(b) Notwithstanding Trans 112.16 (1) (c) and Trans 327.09 (2) (b), on January 31, 2014, the department shall downgrade the CDL of any person who has not made the certification required by sub. (3) (b) or submitted a required medical certificate.

(5) WHEN MEDICAL CERTIFICATE REQUIRED. (a) No person may operate a commercial motor vehicle in non-excepted interstate or foreign commerce after January 30, 2014, unless the person is certified as a Tier 1 driver and has provided a medical

certificate to the department, and the person has verified that the department has completed the action required in this subsection.

Note: A driver required by 49 CFR 383.71 (h) to obtain a medical examiner's certificate who obtained such by virtue of having obtained a medical variance from FMCSA must have in his or her possession the original or a copy of that medical variance documentation at all times when on-duty.

(b) The department shall do all of the following within 10 days after receiving a medical certificate from a Tier 1 driver:

1. Record the certification on the person's driving record under s. 343.23 (2) (a), Stats.

2. Record all required information from the medical certificate on the person's CDLIS driver record.

3. Record the person's medical certification status as "Certified" on the person's CDLIS driver record.

4. File the medical certificate of a Tier 1 driver. The department shall retain the medical certificate for at least 3 years after the date of the medical examination.

(c) A Tier 1 driver, and any person who has certified himself or herself as a Tier 3 driver engaged in non-excepted intrastate commerce, shall possess a medical certificate whenever operating a commercial motor vehicle in non-excepted commerce. This paragraph does not apply after January 30, 2015.

(d) If FMCSA notifies the department that the driver has been issued a medical variance:

1. And if the most recent medical certificate on file with the department contains a medical variance, the department shall indicate the existence of such a medical variance on the CDLIS driver record and on the CDL using the medical variance restriction code "V".

2. And if the most recent medical certificate on file with the department does not contain a medical variance, the department shall notify the driver and require the driver to submit a current medical examiner's certificate reflecting the variance.

(e) Only the medical certificate relating to the most recent medical examination may be considered unexpired, and the department shall deem any medical certificate relating to an earlier medical examination to be expired.

(6) DOWNGRADE PROCESS; REINSTATEMENTS. (a) *When required.* 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, if FMCSA has notified the department that it has removed or withdrawn a medical certificate or medical variance relating to the driver.

3. Any person who possessed a CDL or CLP on January 29, 2012, who did not certify to the department before January 31, 2014, the type of driving in which the person intends to engage or did not provide a required medical certificate.

4. Any person who fails to submit an updated medical examiner's certificate or to have a corrected CDL issued within 60 days after notification under sub. (5) (d) 2.

(b) *How done.* 1. If the department downgrades a CDL, the department shall do all of the following:

a. 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.

b. Record the person's medical certification status as "Not Certified" on the person's CDLIS driver record, if the person was last certified as a Tier 1 driver. The department shall record the entry required under this subdivision within 10 days after expiration of the medical certificate.

c. Notify the person as provided in sub. (7).

d. Complete the actions required under this paragraph not later than 60 days after the expiration of the medical certificate or the deadline for providing a medical certificate.

2. A downgrade under this section has no effect on the operating privileges of any non-commercial vehicle classifications. A person whose CDL is downgraded under this section may retain an operator's license that indicates commercial driver classes and endorsement without making any physical alterations to that operator's license.

3. A downgrade under this subsection is not considered a voluntary surrender of an "H" endorsement under s. 343.265 (1r), Stats. The department may not cancel an "H" endorsement under s. 343.265, Stats., as a result of a CDL downgrade under this subsection. A person may reinstate a CDL that has been downgraded under this subsection affecting an "H" endorsement in the manner provided in this subsection.

(c) *Reinstatement.* 1. A person whose CDL is downgraded for failing to certify the type of driving operations in which he or she intends to engage 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.

Note: A Tier 1 driver whose CDL is downgraded due to an expired medical certificate may reinstate that CDL at any time prior to the CDL expiration date by providing a medical certificate to the department or by changing his or her certification to something other than a Tier 1 driver.

2. A Tier 1 driver whose CDL is downgraded due to FMCSA removing or rescinding a medical variance or medical certificate may reinstate that CDL at any time prior to the CDL expiration date by providing to the department a medical certificate that indicates a variance is not necessary or by changing his or her certification to something other than a Tier 1 driver.

3. Reinstating a CDL that is downgraded under this section has no effect on any suspension, revocation, cancellation, disqualification or withdrawal for another reason.

4. The department may not charge a fee to reinstate a CDL that is downgraded under this section, but may be required to charge fees to reinstate a CDL that is suspended, revoked, cancelled, disqualified or otherwise withdrawn for another reason.

5. Upon reinstatement under this paragraph, the department shall record the reinstatement on the person's driving record maintained by the department and on the person's CDLIS driver record.

6. 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 such endorsements.

(7) NOTICES TO DRIVERS AND EMPLOYERS. (a) The Department shall provide written notice to a Tier 1 driver of all of the following, as appropriate:

1. Notice of 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 not less than 55 days prior to the expiration of the medical certificate.

2. Upon the expiration of the medical certificate, notice 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.

3. Upon downgrading a CDL, notice that the department has downgraded the person's CDL and how the person may reinstate his or her CDL.

(b) The department may provide written notice of reinstatement using the online method established under sub. (8).

(c) Not later than November 30, 2013, the department shall notify any person who possesses a valid CDL who has not made certification required under sub. (3), that he or she must make the certification on or before January 30, 2014; that he or she cannot engage in non-excepted interstate or foreign commerce after January 30, 2014, unless the certification is made and the person provides a medical certification; and that the person's CDL will be downgraded unless the certification is made.

(d) The department shall use the employer notification system under s. 343.27., Stats., to inform an employer of any notice provided under this subsection, if at the time

of that notice the employer is enrolled in the Employer Notification system and the driver is shown in that employer's list of enrolled drivers.

(8) DEPARTMENT ONLINE SERVICES. The department shall make available an online method to do all of the following:

(a) For any person to make the certification required in sub. (3).

(b) For any person to verify the status of his or her commercial driver license, including any authorized vehicle classes and endorsements.

(c) For any Tier 1 driver to upload an electronic copy of his or her medical certificate.

(d) 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.

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

(f) 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.

(END OF RULE TEXT)

Signed at Madison, Wisconsin, this ____ day of
_____ 2014.

MARK GOTTLIEB, P.E.
Secretary
Wisconsin Department of Transportation