

§ 384.403

49 CFR Ch. III (10–1–02 Edition)

(b) *Following second and subsequent year(s) of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

[67 FR 49763, July 31, 2002]

§ 384.403 Availability of funds withheld for noncompliance.

(a) Federal-aid highway funds withheld from a State under § 384.401(a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under § 384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If before June 30 the State submits a document signed by the Governor or his or her delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30, unreturned funds shall lapse and be allocated in accordance with § 350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

[67 FR 49763, July 31, 2002]

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CDL licensing activities.* The Administrator may prohibit a State found to be in substantial non-compliance from performing any of the following four licensing transactions:

- (1) Issuance of initial CDLs.
- (2) Renewal of CDLs.

(3) Transfer of out-of-State CDLs to the State.

(4) Upgrade of CDLs.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Register (NDR) as required by § 383.73 of this subchapter when processing CDL applicants, drivers transferring a CDL issued by another State, CDL renewals and/or upgrades.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial non-compliance with subpart B of this part, as indicated by the factors specified in § 384.405(b), among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination,

the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CDLs.* A CDL issued by a State prior to the date the State is prohibited from issuing CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

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§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to \$1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

[67 FR 49764, July 31, 2002]

PART 385—SAFETY FITNESS PROCEDURES

Sec.

Subpart A—General

- 385.1 Purpose and scope.
- 385.3 Definitions.
- 385.5 Safety fitness standard.
- 385.7 Factors to be considered in determining a safety rating.

- 385.9 Determination of a safety rating.
- 385.11 Notification of safety fitness determination.
- 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.
- 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.
- 385.15 Administrative review.
- 385.17 Change to safety rating based upon corrective actions.
- 385.19 Safety fitness information.

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

- 385.101 Definitions.
- 385.103 Safety monitoring system.
- 385.105 Expedited action.
- 385.107 The safety audit.
- 385.109 The compliance review.
- 385.111 Suspension and revocation of Mexico-domiciled carrier registration.
- 385.113 Administrative review.
- 385.115 Reapplying for provisional registration.
- 385.117 Duration of safety monitoring system.
- 385.119 Applicability of safety fitness and enforcement procedures.

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

Sec.

- 385.201 Who is qualified to perform a review of a motor carrier?
- 385.203 What are the requirements to obtain and maintain certification?
- 385.205 How can a person who has lost his or her certification be re-certified?

Subpart D—New Entrant Safety Assurance Program

Sec.

- 385.301 What is a motor carrier required to do before beginning interstate operations?
- 385.303 How does a motor carrier register with the FMCSA?
- 385.305 What happens after the FMCSA receives a request for new entrant registration?
- 385.307 What happens after a motor carrier begins operations as a new entrant?
- 385.309 What is the purpose of the safety audit?
- 385.311 What will the safety audit consist of?
- 385.313 Who will conduct the safety audit?
- 385.315 Where will the safety audit be conducted?
- 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?