

### § 384.403

year(s) of noncompliance under this part.

[86 FR 35642, July 7, 2021]

### § 384.403 Availability of funds withheld for noncompliance.

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

[80 FR 59073, Oct. 1, 2015]

### § 384.405 Decertification of State CDL program.

(a) *Prohibition on CLP or CDL transactions.* The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following CLP or CDL transactions:

- (1) Initial issuance.
- (2) Renewal.
- (3) Transfer.
- (4) Upgrade.

(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 Registry problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing or upgrading a CLP or issuing, renewing, upgrading or transferring a CDL.

(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 CLP or 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 time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must af-

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fect a substantial number of either CLP and CDL applicants or drivers.

(d) *Decertification: Preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in paragraph (b) of this section, 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/she will issue a decertification order prohibiting the State from issuing CLPs and 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/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 CLPs and 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 CLPs or CDLs.* A CLP or CDL issued by a State prior to the date the State is prohibited from issuing CLPs or CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

[76 FR 26896, May 9, 2011, as amended at 78 FR 17882, Mar. 25, 2013]