

later than 90 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security screening process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

(d) *Hazardous materials endorsement renewal cycle.* Each State must require that hazardous materials endorsements be renewed every 5 years or less so that individuals are subject to a Transportation Security Administration security screening requirement referenced in paragraph (b) of this section at least every 5 years.

[68 FR 24850, May 5, 2003, as amended at 68 FR 63033, Nov. 7, 2003; 69 FR 51393, Aug. 19, 2004]

Subpart J—Commercial Driver's License Document

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).

(2) The full name, signature, and mailing address of the person to whom such license is issued;

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(4) Color photograph of the driver;

(5) The driver's State license number;

(6) The name of the State which issued the license;

(7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and
(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

[53 FR 27657, July 21, 1988, as amended at 67 FR 49760, July 31, 2002]

§ 383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

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AUTHORITY: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

SOURCE: 59 FR 26039, May 18, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 384 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. 31311(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

[62 FR 37152, July 11, 1997]

§ 384.103 Applicability.

The rules in this part apply to all States.

§ 384.105 Definitions.

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.

(b) As used in this part:

Issue and *issuance* mean initial licensure, license transfers, license renewals, license upgrades, and nonresident commercial driver's licenses (CDLs), as described in § 383.73 of this title.

Licensing entity means the agency of State government that is authorized to issue drivers' licenses.

Year of noncompliance means any Federal fiscal year during which—

(1) A State fails to submit timely certification as prescribed in subpart C of this part; or

(2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FMCSA under § 384.307(c) of this part.

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) *Materials incorporated.* The AAMVANet, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures," Version 2.0, October 1998, IBR approved for §384.231(d).

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW, Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203.

[67 FR 49761, July 31, 2002]

Subpart B—Minimum Standards for Substantial Compliance by States**§ 384.201 Testing program.**

The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles (CMVs) in accordance with the minimum Federal standards contained in part 383 of this title.

§ 384.202 Test standards.

No State shall authorize a person to operate a CMV unless such person passes a knowledge and driving skills test for the operation of a CMV in accordance with part 383 of this title.

§ 384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)(3)).

[67 FR 49761, July 31, 2002]

§ 384.204 CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a CMV only by issuance of a CDL, unless a waiver under the provisions of §383.7 applies, which contains, at a minimum, the information specified in part 383, subpart J, of this title.

§ 384.205

(b) *Exceptions*—(1) *Training*. The State may authorize a person, who does not hold a CDL valid in the type of vehicle in which training occurs, to undergo behind-the-wheel training in a CMV only by means of a learner's permit issued and used in accordance with § 383.23(c) of this title.

(2) *Confiscation of CDL pending enforcement*. A State may allow a CDL holder whose CDL is held in trust by that State or any other State in the course of enforcement of the motor vehicle traffic code, but who has not been convicted of a disqualifying offense under § 383.51 based on such enforcement, to drive a CMV while holding a dated receipt for such CDL.

§ 384.205 CDLIS information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(a)(3)(ii) of this title, and, based on that information, shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.206 State record checks.

(a) *Required checks*—(1) *Issuing State's records*. Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(a)(3) of this title.

(2) *Other States' records*. Before the initial or transfer issuance of a CDL to a person, and before renewing a CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle.

(ii) Within the time period specified in § 384.232, request the complete driving record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(iii) States receiving a request for the driving record of a person currently

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or previously licensed by the State must provide the information within 30 days.

(b) *Required action*. Based on the findings of the State record checks prescribed in this section, the State shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

[59 FR 26039, May 18, 1994, as amended at 67 FR 49761, July 31, 2002]

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(f) of this title, the State shall:

(a) Notify the operator of the CDLIS of each CDL issuance;

(b) Notify the operator of the CDLIS of any changes in driver identification information; and

(c) In the case of transfer issuances, implement the Change State of Record transaction, as specified by the operator of the CDLIS, in conjunction with the previous State of record and the operator of the CDLIS.

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

[67 FR 49761, July 31, 2002]

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders*. Whenever a person who holds a CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking

violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(b) *Required notification with respect to non-CDL holders.* Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(c) *Time period for notification of traffic violations.* (1) Beginning on September 30, 2005, the notification must be made within 30 days of the conviction.

(2) Beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

[67 FR 49761, July 31, 2002]

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CDL or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined by § 383.5 of this subchapter, or under the provisions of § 383.73(g) or § 384.231(b)(2) of this subchapter;

(b) The CDL holder's noncommercial driving privilege has been revoked, suspended, or canceled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

[67 FR 49761, July 31, 2002]

§ 384.211 Return of old licenses.

The State shall not issue a CDL to a person who possesses a driver's license issued by another State or jurisdiction

unless such person first surrenders the driver's license issued by such other State or jurisdiction in accordance with §§ 383.71(a)(7) and (b)(4) of this title.

§ 384.212 Domicile requirement.

(a) The State shall issue CDLs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this title; except that the State may issue a nonresident CDL under the conditions specified in §§ 383.23(b), 383.71(e), and 383.73(e) of this title.

(b) The State shall require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(b) of this title.

§ 384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the penalties prescribed under part 383, subpart D, of this subchapter.

[67 FR 49761, July 31, 2002]

§ 384.214 Reciprocity.

The State shall allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CDL which is—

(a) Issued to him or her by any other State or jurisdiction in accordance with part 383 of this title;

(b) Not suspended, revoked, or canceled; and

(c) Valid, under the terms of part 383, subpart F, of this title, for the type of vehicle being driven.

§ 384.215 First offenses.

(a) *General rule.* The State must disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in items (1) through (8) of Table 1 to § 383.51 of this subchapter, for no less than one year.

(b) *Special rule for hazardous materials offenses.* If the offense under paragraph (a) of this section occurred while the

§ 384.216

driver was operating a vehicle transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (implementing regulations at 49 CFR 177.823), the State shall disqualify the person for no less than three years.

[59 FR 26039, May 18, 1994, as amended at 67 FR 49762, July 31, 2002]

§ 384.216 Second offenses.

(a) *General rule.* The State must disqualify for life from operating a CMV each person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in Table 1 to §383.51 of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* A driver disqualified for life under Table 1 to §383.51 may be reinstated after 10 years by the driver's State of residence if the requirements of §383.51(a)(5) have been met.

[67 FR 49762, July 31, 2002]

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life each person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction of a first offense, of using a CMV in the commission of a felony described in item (9) of Table 1 to §383.51 of this subchapter. The State shall not apply the special rule in §384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to §383.51 of this subchapter.

[67 FR 49762, July 31, 2002]

§ 384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in §383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations as specified in Table 2 to §383.51.

[67 FR 49762, July 31, 2002]

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§ 384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in §383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations as specified in Table 2 to §383.51. This disqualification period must be in addition to any other previous period of disqualification.

[67 FR 49762, July 31, 2002]

§ 384.220 National Driver Register information.

Before issuing a CDL to any person, the State shall, within the period of time specified in §384.232, perform the check of the National Driver Register in accordance with §383.73(a)(3)(iii) of this title, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.221 Out-of-service regulations (intoxicating beverage).

The State shall adopt, and enforce on operators of CMVs as defined in §§383.5 and 390.5 of this title, the provisions of §392.5 (a) and (c) of this title in accordance with the Motor Carrier Safety Assistance Program as contained in 49 CFR part 350 and applicable policy and guidelines.

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in §383.5 of this subchapter, which meet the minimum requirements of §§383.37(c), Table 4 to 383.51, and 383.53(b) of this subchapter.

[67 FR 49762, July 31, 2002]

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in §383.5 of this subchapter,

which meet the minimum requirements of §§ 383.37(d), Table 3 to 383.51, and 383.53(c) of this subchapter.

[67 FR 49762, July 31, 2002]

§ 384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of non-CMV's, as defined in § 383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to § 383.51 of this subchapter.

[67 FR 49762, July 31, 2002]

§ 384.225 Record of violations.

The State must:

(a) *CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *A person required to have a CDL.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) *States*—All information on all driver records.

(2) *Secretary of Transportation*—All information on all driver records.

(3) *Driver*—Only information related to that driver's record.

(4) *Motor Carrier or Prospective Motor Carrier*—After notification to a driver, all information related to that driver's, or prospective driver's, record.

[67 FR 49762, July 31, 2002]

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

[67 FR 49762, July 31, 2002]

§§ 384.227–384.230 [Reserved]

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.* (1) *CDL holders.* A State must satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *A person required to have a CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the limitation on licensing provisions of § 384.210 and the timing and record-keeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

§ 384.232

(c) *Required timing.* The State must disqualify a driver as expeditiously as possible.

(d) Recordkeeping requirements. The State must conform to the requirements of the October 1998 edition of the AAMVAnet, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures," Version 2.0. (Incorporated by reference, see §384.107.) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§384.215 through 384.219, and 384.221 through 384.224 of this part.

[67 FR 49762, July 31, 2002]

§ 384.232 Required timing of record checks.

The State shall perform the record checks prescribed in §§384.205, 384.206, and 384.220, no earlier than 10 days prior to issuance for licenses issued before October 1, 1995. For licenses issued after September 30, 1995, the State shall perform the record checks no earlier than 24 hours prior to issuance if the license is issued to a driver who does not currently possess a valid CDL from the same State and no earlier than 10 days prior to issuance for all other drivers.

§ 384.233 Background records checks.

(a) The State shall comply with Transportation Security Administration requirements concerning background records checks for drivers seeking to obtain, renew, transfer or upgrade a hazardous materials endorsement in 49 CFR Part 1572, to the extent those provisions impose requirements on the State.

(b) The State shall comply with each requirement of 49 CFR 383.141.

[68 FR 23850, May 5, 2003]

Subpart C—Procedures for Determining State Compliance

§ 384.301 Substantial compliance-general requirements

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of sub-

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part B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) A State shall come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than three years after September 30, 2002.

[67 FR 49763, July 31, 2002]

§ 384.303 [Reserved]

§ 384.305 State certifications for Federal fiscal years after FY 1994.

(a) *Certification requirement.* Prior to January 1 of each Federal fiscal year after FY 1994, each State shall review its compliance with this part and certify to the Federal Motor Carrier Safety Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Federal Motor Carrier Safety Administration, located in that State.

(b) *Certification content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. 31311(a), as defined in 49 CFR 384.301, since [the first day of the current Federal fiscal year], and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through [the last date of the current Federal fiscal year]."

(Approved by the Office of Management and Budget under control number 2125–0542)

[59 FR 26039, May 18, 1994, as amended at 62 FR 37152, July 11, 1997]

§ 384.307 FMCSA program reviews of State compliance.

(a) *FMCSA Program Reviews.* Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State must cooperate with the review and provide any information requested by the FMCSA.

(b) *Preliminary FMCSA determination and State response.* If, after review, a preliminary determination is made either that the State has not submitted the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) *Reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA preliminary determination is incorrect. The State must provide documentation of corrective action as required by the agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by the agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) *Final FMCSA determination.* If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination, the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) *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.

[67 FR 49763, July 31, 2002]

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. 31311(a) for any fiscal year in which it:

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FMCSA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. 31311(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

[62 FR 37152, July 11, 1997]

Subpart D—Consequences of State Noncompliance**§ 384.401 Withholding of funds based on noncompliance.**

(a) *Following the first year of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway 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 first 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. 1754) 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 was not in substantial compliance with subpart B of this part.

(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.

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(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, unrestored 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 noncompliance 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 Li-

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cence 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 noncompliance 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.

[67 FR 49763, July 31, 2002]

§ 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

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