

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 350, 355, and 388**

**[Docket No. FMCSA-2017-0370]**

**RIN 2126-AC02**

**Motor Carrier Safety Assistance Program**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends two of the Agency's financial assistance programs. As required by the Fixing America's Surface Transportation (FAST) Act, FMCSA adopts a new funding formula based on recommendations from the Motor Carrier Safety Assistance Program (MCSAP) Formula Working Group (working group), effective for fiscal year (FY) 2021 grant funds and beyond. This rule reorganizes the Agency's regulations to create a standalone subpart for the High Priority Program. It also includes other programmatic changes to reduce redundancies, require the use of 3-year MCSAP commercial vehicle safety plans (CVSPs), and align the financial assistance programs with FMCSA's current enforcement and compliance programs.

**DATES:** This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Kostelnik, State Programs Division, at FMCSA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590-0001; (202) 366-5721; jack.kostelnik@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

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## **I. RULEMAKING DOCUMENTS**

### **A. Availability of Rulemaking Documents**

For access to docket FMCSA-2017-0370 to read background documents and comments received, go to <https://www.regulations.gov> at any time, or to Docket Operations at U.S. Department of Transportation, Room W12-140, West Building Ground Floor, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### **B. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice “DOT/ALL 14 – Federal Docket Management System (FDMS),” which can be reviewed at <https://www.transportation.gov/privacy>.

## **II. EXECUTIVE SUMMARY**

### **A. Purpose of the Regulatory Action**

The purpose of this regulatory action is to amend and reorganize 49 CFR part 350, including adding relevant sections that are currently located in part 355, and to address certain regulations that are no longer necessary or are redundant. Moreover, the FAST Act requires FMCSA to implement a multi-year CVSP with annual updates for States<sup>1</sup> applying for MCSAP funds and to provide a new MCSAP allocation formula.

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<sup>1</sup> Unless otherwise provided in this preamble, FMCSA uses the term “State” as including the District of Columbia and the 5 Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), consistent with 49 U.S.C. 31101(4).

This rule implements the new MCSAP allocation formula, requires States to adopt 3-year CVSPs, and reorganizes the Agency's regulations to create a standalone subpart for the High Priority Program. FMCSA's primary legal authority for this rulemaking is Title V, Subtitle A of the FAST Act, Pub. L. 114-94, 129 Stat. 1312, 1514-34 (Dec. 4, 2015).

## **B. Summary of Major Provisions**

This rule implements a new MCSAP allocation formula that is effective for FY 2021 grant funds and beyond. The FAST Act required the Secretary of Transportation (Secretary) to assemble a working group to recommend a new MCSAP allocation formula. The Agency considered and fully adopts the recommendations of the working group.

The new MCSAP allocation formula includes three components: State, Border, and Territory. The formula assigns each component a percentage of MCSAP funds. The State Component allocates funds using five equally-weighted factors and then applies minimum and maximum caps to the allocated funding. The Border Component allocates funding based on the number of United States ports of entry and the number of commercial motor vehicle (CMV) crossings at those ports of entry, subject to minimum and maximum funding levels. This Border Component accounts for differences in the number of crossings per port of entry at the Northern border compared to the Southern border of the United States. Finally, the Territory Component ensures that each Territory, except for the Commonwealth of Puerto Rico (which is allocated funding under the State Component), receives a minimum funding amount of \$350,000. The formula adds any funds not allocated under the Border or Territory Component to the State Component for allocation. The formula promotes stability in funding and protects States from

experiencing significant and unpredicted changes by including a hold-harmless provision and a funding cap.

This rule requires States to use CVSPs in accordance with the FAST Act, and provides direction to States on how and when to submit CVSPs on 3-year cycles. For the first year of the CVSP, States submit quantitative performance objectives, analysis of past performance, and other documents traditionally provided in an annual CVSP, as well as a budget for the initial year. For the second and third years of the CVSP, States submit an annual update that includes changes to the CVSP (including updates to performance objectives and adjustments to activities), a budget for the applicable fiscal year, and other documents required on an annual basis.

FMCSA clarifies that it is a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers issued under subpart E of 49 CFR part 385 by verifying possession of the permit when required while conducting vehicle inspections and investigations. This rule does not require States to adopt part 385 as a condition of receiving MCSAP funds, but States are strongly encouraged to do so to support a comprehensive CMV safety program.

The rule also revises and reorganizes part 350. Currently, part 350 intertwines the High Priority Program and MCSAP regulations, but some regulations do not apply to both programs. To provide clarity for the eligible recipients, this rule separates the two programs into different subparts in part 350. In addition, FMCSA adds relevant sections of part 355 to part 350. These changes address regulatory compatibility, reduce redundancy, and make part 350 more clear and concise.

Finally, FMCSA removes part 388, titled “Cooperative Agreements with States.” FMCSA does not rely on part 388 provisions to enter into agreements with State partners because there is no specific funding for that part.

### **C. Costs and Benefits**

This rule adopts a new MCSAP allocation formula to replace the current formula that has been in use for more than a decade with little modification. The new formula makes several improvements over the current formula. The new formula will result in a reallocation of grant funding, beginning with FY 2021, but will not change the total amount of funds distributed.

The rule requires States to use CVSPs in accordance with the FAST Act. It also provides direction to States on how and when to submit CVSPs on 3-year cycles. Under the current regulations, States submit lengthy CVSP applications annually to receive MCSAP funding. However, beginning in FY 2018, States began voluntarily submitting CVSPs on 3-year cycles, as is now required by this rule. Following the implementation of this rule, States will no longer be able to submit annual CVSP applications and must submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years. Based on experience from voluntary implementation, FMCSA expects that 3-year CVSPs will be less burdensome and time consuming for States than submitting lengthy CVSP applications annually, which will result in lower program administrative costs. All 55 current MCSAP participants<sup>2</sup> voluntarily transitioned to 3-year CVSPs, and thus, there is no impact from this change.

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<sup>2</sup> Currently, the 55 MCSAP participants consist of the States minus Oregon.

### **III. ABBREVIATIONS, ACRONYMS, AND SYMBOLS**

CE	Categorical Exclusion
CFR	Code of Federal Regulations
CHP	Department of California Highway Patrol
CMV	Commercial motor vehicle
CVSA	Commercial Vehicle Safety Alliance
CVSP	Commercial vehicle safety plan
DOT	Department of Transportation
eCVSP	Electronic commercial vehicle safety plan
E.O.	Executive Order
FAST Act	Fixing America’s Surface Transportation Act
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
FY	Fiscal year
HMRs	Federal Hazardous Materials Regulations
MCSAP	Motor Carrier Safety Assistance Program
MOE	Maintenance of effort
NASI	North American Standard Inspection
NOFO	Notice of Funding Opportunity
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
PRISM	Performance and Registration Information Systems Management
RFA	Regulatory Flexibility Act
§	Section
Secretary	Secretary of Transportation
working group	MCSAP Formula Working Group
U.S.C.	United States Code
VMT	Vehicle miles traveled

### **IV. LEGAL BASIS FOR THE RULEMAKING**

FMCSA has and continues to issue the regulations found in 49 CFR parts 350 and 355 under the authority of 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141, 31161, 31310, 31311, and 31502.

The primary basis for this rule is Title V, Subtitle A of the FAST Act, Pub. L. 114-94, 129 Stat. 1312, 1514-34 (Dec. 4, 2015), which consolidated several of FMCSA’s financial assistance programs and authorized program funding levels through

FY 2020. Key provisions, effective FY 2017, include section 5101, which amended 49 U.S.C. 31102, consolidating the former New Entrant, Performance and Registration Information Systems Management (PRISM), Safety Data Improvement, and Border Enforcement grant programs into the MCSAP formula grant. In addition, it established the High Priority Program as a separate discretionary financial assistance program for qualifying entities and projects relating to motor carrier safety and Innovative Technology Deployment. Section 5101 also amended 49 U.S.C. 31104, which prescribes, among other things, authorized funding levels through FY 2020, the minimum Federal funding share applicable to these (and other) FMCSA financial assistance programs, and the periods of time in which awarded funds may be used.

Section 5106 of the FAST Act (note following 49 U.S.C. 31102) required the Secretary to appoint a working group, consisting of prescribed stakeholder interests, to develop and recommend to the Secretary a new MCSAP allocation formula reflecting specified factors for the award of MCSAP funds. Following receipt of the working group's recommendations, section 5106 required the Secretary to issue a notice of proposed rulemaking (NPRM). The working group submitted its report on April 7, 2017, and an addendum to the report on January 8, 2019. As noted below, FMCSA issued its NPRM on August 22, 2019 (84 FR 44162).

Section 5107 of the FAST Act (note following 49 U.S.C. 31102) addresses the maintenance of effort calculations for FY 2017 and subsequent fiscal years until the new MCSAP allocation formula is in place. It also allows States to request a one-time permanent adjustment to their maintenance of effort baselines in the first fiscal year of the new MCSAP allocation formula.



FMCSA has authority under Federal hazardous materials transportation law, 49 U.S.C. 5101-5128, to require States to cooperate in the enforcement of Federal hazardous materials safety permit requirements as a condition to qualify for MCSAP funds. The purpose of the hazardous materials transportation law is “to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce” (49 U.S.C. 5101). Section 5109(a) provides that a “motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit” issued by FMCSA. The Secretary has authority to prescribe what hazardous materials require a safety permit (49 U.S.C. 5109(b)). In addition, the Secretary has authority to require States to adopt provisions compatible with Federal provisions on hazardous materials transportation safety to receive MCSAP funds (49 U.S.C. 31102(c)(1)). Exercising these authorities, this rule clarifies that States are required to cooperate in ensuring carriers transporting certain hazardous materials possess the required FMCSA hazardous materials safety permit.

Any clarifying or non-substantive changes made by this final rule that are not explicitly attributed to the FAST Act or 49 U.S.C. 5101-5128 are made under one or more of the statutory authorities listed at the beginning of this section. FMCSA implements these statutory provisions by delegation from the Secretary in 49 CFR 1.87.

## **V. BACKGROUND AND PROPOSED RULE**

### **A. Regulatory History**

On August 22, 2019, FMCSA published an NPRM titled “Motor Carrier Safety Assistance Program” in the *Federal Register* (84 FR 44162). FMCSA received one

comment requesting an extension of the comment period. On October 9, 2019, FMCSA published a notice extending the comment period to October 21, 2019 (84 FR 54093). FMCSA received three additional comments on the NPRM. No public meeting was requested and none was held.

The NPRM included a detailed discussion of the background for this regulatory action, including the history of MCSAP, the FAST Act changes to MCSAP, a previous omnibus rule that implemented portions of the FAST Act, the working group, and States' voluntary transition to 3-year CVSPs. That discussion is not repeated here, but can be found in the published NPRM (84 FR at 44165-7).

#### **B. Summary of the Proposed Rule**

A detailed summary of the proposed rule can be found in the NPRM (84 FR at 44167-72), which includes discussion of the separation of MCSAP and the High Priority Program provisions, the proposed MCSAP allocation formula, and the proposed 3-year CVSP requirements. It also included discussions of the following topics: (1) the proposed changes to fully implement the PRISM program; (2) the FMCSA Administrator's discretion to distribute funding during an extension of the Agency's authorization or a period the Agency is operating under a continuing resolution; (3) the relocation to 49 CFR part 350 of relevant requirements of part 355 relating to regulatory compatibility; (4) a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers; and (5) the removal of 49 CFR part 388 for which there is no specific funding and therefore no reliance by the Agency. Finally, FMCSA discussed changes to improve the organization of part 350, update definitions, and clarify when a State may retain an exemption for a particular

segment of the motor carrier industry from all or part of its laws or regulations that were in effect before April 1988.

## **VI. DISCUSSION OF COMMENTS AND RESPONSES**

FMCSA received four comments on the NPRM. The first comment requested an extension to the comment period, which was granted (as noted above in **Regulatory History**). The second comment was non-responsive to the NPRM and, as such, is not discussed here. The Department of California Highway Patrol (CHP) and the Commercial Vehicle Safety Alliance (CVSA) submitted the remaining two comments. Both comments responded to the five questions posed in the NPRM. The Agency summarizes those comments below.

*Q.1. Are there other elements FMCSA should consider including in a new MCSAP allocation formula and, if so, what are they? Why should such elements be considered? How would they promote safety?*

Comments: Both the CHP and CVSA agreed with the MCSAP elements as proposed. CVSA stated that the “working group conducted a rigorous review of the current formula components, as well as an extensive review of alternative data points before arriving at the final recommendation. The group used safety-based methodology and sought to balance the needs of individual [State] programs with the overarching goal of MCSAP. The final recommendations are designed to direct MCSAP funds to where they can most benefit overall commercial motor vehicle safety, while providing [S]tates with funding stability that enables program managers to plan and adjust their programs accordingly.” CVSA also noted that any changes to the MCSAP elements should be subject to the same evaluation methodology and be based on the same priorities as those considered by the working group. The CHP commented that the funding allocations

resulting from the proposed elements appropriately assist the CHP in promoting greater safety and compliance with regulatory requirements within the framework of current CHP operations that meet or exceed FMCSA grant program requirements.

Response: FMCSA agrees with the commenters. As such, the Agency does not make any changes to the proposed elements included in the MCSAP allocation formula.

*Q.2. Should there be additional requirements in CVSPs to ensure MCSAP funding is used efficiently to promote safety and, if so, what are they? Why should such requirements be considered? How would they promote safety?*

Comments: CVSA responded that no additional requirements should be included and that additional requirements would not be effective. CVSA suggested that FMCSA should look for ways to reduce the burden on States by lessening current reporting requirements, particularly with respect to information to which the Agency has direct access or duplicative sections within the CVSP. The CHP suggested that there be a requirement to use “commercially trained” personnel when MCSAP money is used.

Response: The Agency commits to look for ways to minimize burden by reviewing reporting requirements as a part of its annual review of CVSP design.

Existing paragraph (p) of § 350.211 provides a State must certify that MSCAP-funding personnel (including sub-grantees) meet the standards in 49 CFR part 385, subpart C, for performing inspections, audits, and investigations. Rather than repeating all the certifications that correspond to the conditions States must meet to qualify for MCSAP funds, as in existing § 350.211, new §§ 350.211(i)(1)(i) and 350.213(e)(1)(i) provide that States must certify they meet all the MCSAP conditions in proposed § 350.207. The relevant condition as proposed in § 350.207(a)(6) required more broadly that States must provide assurances they have the “qualified personnel necessary to

enforce compatible safety laws, regulations, standards, and orders.” The Agency agrees with the CHP comment that the added specificity in existing § 350.211(p) provides clarity regarding what “qualified personnel” includes. Accordingly, FMCSA modifies § 350.207(a)(6) to include language that clarifies certified personnel are required.

*Q.3. Should the Incentive Fund be eliminated from a new MCSAP allocation formula? Why should the Incentive Fund be kept or eliminated? How would keeping or eliminating the Incentive Fund promote safety?*

Comments: CVSA recommended elimination of the Incentive Fund. CVSA commented that the “Incentive Fund model does not fit within the proposed structure, as it is not correlated with crash risk, nor does it provide stable, reliable funding for the jurisdictions.” It continued, as noted by the working group, “the factors used in the incentive model are no longer relevant. Distributing funds through the incentive model does not ensure that funds are being spent where they can have the most direct impact on safety.”

The CHP stated that the Incentive Fund does not account for statistical anomalies over the 10-year crash average, allowing single or multiple mass-casualty events in a given year (i.e., an outlier event) to skew allocation of incentive funding. The CHP noted, if the Incentive Fund is retained, it should be modified to allow the exclusion of statistical outlier events.

Response: As the working group and CVSA noted, the factors used in the Incentive Fund are no longer relevant. Thus, as proposed by the working group and in the NPRM, the Agency eliminates the Incentive Fund.

*Q.4. Should a new MCSAP allocation formula include variables connected with crash rates or risk? If so, what variables should be considered and why? How would such variables promote safety?*

Comments: CVSA recommended basing allocations on crash risk variables, as proposed by the working group. CVSA noted that the working group considered a number of different variables and measures before concluding that using crash risk, rather than crash rates or other crash-related metrics, would most effectively allocate funds to improve safety. CVSA stated “[f]ocusing on crash rates may have the unintentional effect of moving funds away from a jurisdiction that has a higher risk of crashes but has been successful in reducing the occurrence of those crashes through implementation of their enforcement and outreach programs.”

The CHP agreed with using crash rate variables, but noted the need to adjust crash rates to ensure that outlier events weigh less heavily than the overall number of crashes, to avoid results that present an inaccurate crash picture. The CHP continued that “crash trends indicate a more accurate reflection of the true impacts of enforcement effectiveness than the sheer number of fatalities in a single [crash].”

Response: FMCSA acknowledges the comments, which are in line with the formula proposed by the working group and included in the NPRM that bases allocations on crash risk variables. Because FMCSA eliminates the Incentive Fund and the MCSAP formula factors do not use crash rate data, the MCSAP allocation formula adopted in this rule should not produce the unintentional effects identified by CVSA and the CHP. Accordingly, the Agency does not change the proposed formula in this rule.

*Q.5.<sup>3</sup> Should a new MCSAP allocation formula be more sensitive to changes in crash rates? If so, how could a new allocation formula be more sensitive to changes in crash rates and why would it be more sensitive to such changes? How would such a formula promote safety?*

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<sup>3</sup> As noted by the CHP, the NPRM lists two questions numbered “4,” instead of a question number 4 followed by a question number 5. Both the CHP and CVSA labelled their comments as responses to question 5; therefore, FMCSA does the same in this final rule.

Comments: CVSA responded that the proposed allocation formula already balances a number of different factors, such as crash risk, with States' need for reliability and continuity in funding. CVSA recommended that FMCSA consider any suggested changes to the proposed formula carefully, as changes will likely disrupt the balance and have a negative impact on the overall performance of the new formula. While relationship to crash risk is a critical factor, CVSA responded that it is imperative that funds not shift too quickly or unpredictably. If States are not confident in the timing and amount of grant funding, they will be reluctant to fill positions, continue enforcement programs, or engage in bold new initiatives. The CHP commented that a formula that is more sensitive to changes in crash rates would harm States with outlier events, causing a reduction in funding for otherwise successful enforcement and education programs.

Response: FMCSA agrees that an allocation formula that focuses on crash rates can have unintended consequences and harm States when an outlier event occurs. Basing the formula on crash risk, rather than crash rates, most effectively allocates funds to improve safety. The careful balance in the allocation formula of crash risk and predictability in funding is integral to ensuring robust safety programs and innovation. As such, the Agency makes no changes to the proposed formula in this rule.

#### *Additional Comments*

CVSA also provided several additional comments. Some were more general in nature, and others were suggestions related to one or more specific sections, as reflected in the below discussion of those comments.

CVSA supported FMCSA's efforts to revise part 350 to make necessary updates and clean up irrelevant sections because clarity and uniformity in the regulations are the

cornerstones of an effective, consistent enforcement program. CVSA supported separate subparts for the requirements of MCSAP and the High Priority Program and the new requirements for CVSPs, stating these changes bring additional clarity to the regulations, improving States' ability to understand and comply with the requirements in part 350. As discussed above, CVSA supported the adoption of the recommendations set forth by the working group included in this rule. CVSA encouraged FMCSA to continue working to improve the existing data sets and identify potential new ones.

*Section 350.103 When do the financial assistance program changes take effect?*

Comment: CVSA noted FMCSA proposed to implement the changes beginning with FY 2020; however, the comment period for the rulemaking ended after the beginning of the fiscal year. CVSA stated that the Agency should not move ahead with implementing the new allocation formula until after the close of the comment period and the Agency issues its final rule. Noting that States and FMCSA need time to prepare for and adjust their programs, CVSA recommended that the Agency implement the allocation formula and changes to part 350 beginning with FY 2021.

Response: FMCSA agrees that States need time to prepare for the changes and adjust their programs accordingly. Therefore, FMCSA modifies § 350.103 to provide that the changes to part 350 take effect for FY 2021 financial assistance funds and beyond.

*Section 350.105 What definitions are used in this part?*

Comment: CVSA supported the definition changes FMCSA proposed with one exception. It requested that the definition for the North American Standard Inspection (NASI) include attribution to CVSA, as CVSA owns all rights to non-regulatory elements created within the NASI.



CVSA agreed with the proposed elimination of an exception for 49 CFR 171.15 and 171.16 in the definition of Hazardous Materials Regulations (HMRs) and stated it would improve reporting and data collection. However, CVSA noted the preamble discussion made it appear the referenced sections apply only to investigations and not to roadside inspections, but it found the discussion unclear. CVSA requested that the Agency clarify how this change would impact roadside inspections, or add language explaining it applies only to investigations.

Response: With respect to the request to acknowledge CVSA's role in the development of the NASI, FMCSA revises the proposed definition to continue use of the language in existing § 350.105. The existing definition states that FMCSA and CVSA developed the inspection criteria.

Sections 171.15 and 171.16 contain requirements to provide a telephone or online report to the Pipeline and Hazardous Materials Safety Administration (PHMSA) through the National Response Center within 12 hours of a reportable incident (as defined by § 171.15) and a written report to PHMSA within 30 days of a reportable incident (as defined by § 171.16). Because the timing of these reports is tied to specific incidents, they are not generated and enforced through commercial vehicle inspections. This should provide the clarity CVSA requested.

*Sections 350.201 What is MCSAP? and 350.207(a)(2) What conditions must a State meet to qualify for MCSAP funds?*

Comment: CVSA expressed concern that the proposed regulations were ambiguous in terms of what States must do to qualify for MCSAP funding. Specifically, proposed § 350.201(b)(3) required States to “[a]dopt and enforce effective motor carrier, CMV, and driver safety regulations and practices consistent with Federal requirements.”

Proposed § 350.207(a)(2) provided that to qualify for MCSAP funds a State must improve motor carrier safety “by adopting and enforcing compatible safety laws and regulations, standards, and orders.” CVSA noted the inconsistent language and that the proposed regulations no longer spelled out precisely which Federal Motor Carrier Safety Regulations (FMCSRs) and HMRs must be adopted by States to have compatible laws. CVSA requested that FMCSA revise the language to specifically identify which parts must be adopted.

Response: With respect to § 350.201(b)(3), CVSA points out an unintended consequence of the proposed language. FMCSA intended § 350.201 to be an overview of the goals and purposes of MCSAP. The Agency further intended paragraph (b) to be a restatement of existing § 350.103 regarding the purpose of part 350, which restates the goals of MCSAP in 49 U.S.C. 31102(b). By replacing the introductory paragraph of existing § 350.103 with the phrase “MCSAP requires States to” in proposed § 350.201(b) for brevity, the Agency appeared to add new requirements for States that were inconsistent with those stated in the conditions of participation in proposed § 350.207. This was not FMCSA’s intent. To address this issue, FMCSA replaces the phrase “MCSAP requires States to” with a slightly modified version of the introductory paragraph in existing § 350.103. FMCSA also makes changes in § 350.201(b)(3) to maintain consistency in the use of the term “compatible,” as discussed in the next paragraph.

CVSA correctly points out that, except for the definition section, the proposed regulations no longer spelled out precisely which FMCSRs and HMRs States had to adopt to have compatible laws. One of the Agency’s goals for this rulemaking is to

provide clarity for States with respect to compatibility issues. Currently, there are duplicative regulations addressing compatibility and inconsistent terminology is used when discussing compatibility. This understandably confused States. FMCSA addresses these issues by (1) integrating pertinent provisions of part 355 into part 350 to improve the organization and eliminate duplication of the compatibility regulations, and (2) using clearly defined terms consistently throughout part 350. As such, the Agency defines “compatible” and “compatibility” as terms of art in § 350.105 using the terms “FMCSRs” and “HMRs.” In turn, the Agency defines the terms “FMCSRs” and “HMRs” in § 350.105 by stating the specific regulatory parts included in those definitions that States must adopt. The intent is to simplify the regulatory text and improve consistency by substituting defined terms of art instead of lengthy repetitions of the parts of the regulations States must adopt and enforce, which are prone to being stated inconsistently. Because FMCSA’s approach differs from what States are accustomed to, FMCSA revises the proposed regulatory text in this final rule to include cross-references to § 350.105 the first time “compatible” or “compatibility” is used in a section to remind readers to consult the specific regulatory definition.

While reviewing the new terms in proposed § 350.105 to respond to CVSA’s comment, the Agency noticed the proposed definition of “compatible” and proposed § 350.303(d) conflicted with the underlying statutory provision in 49 U.S.C. 31141(c). Paragraph (c)(4) of that statutory section provides a State law or regulation on CMV safety (a CMV is defined in 49 U.S.C. 31132 to mean, in part, a vehicle used in interstate commerce) that is in addition to or more stringent than the FMCSRs may be enforced unless the Secretary decides that (A) the State provision has no safety benefit; (B) the

State provision is incompatible with the FMCSRs; or (C) enforcement of the State provision would cause an unreasonable burden on interstate commerce (49 U.S.C. 31141(c)(4)). FMCSA included the criteria in proposed § 350.303. Proposed § 350.303(d)(2)(iii) provided that, for such State provisions to be compatible with the FMCSRs and enforceable, the State had to demonstrate that (A) the State provisions had a safety benefit; (B) the State provisions were compatible with the FMCSRs; and (C) enforcement would not cause an unreasonable burden on interstate commerce. In doing so, FMCSA inadvertently created a standard to determine “compatibility” that uses the term “compatible,” which would effectively nullify some of the standard. Thus, FMCSA must align the regulations with the underlying statutory authority.

The Agency corrects this regulatory conflict by changing § 350.303(d)(2)(ii) to provide that the State must demonstrate, in part, a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs “does not unreasonably frustrate the Federal goal of uniformity.” This change emphasizes the need for uniformity while providing flexibility to States with innovative safety requirements that are not identical to the national norm. Similarly, the Agency modifies the definition of “compatible or compatibility” in § 350.105 relating to interstate commerce to incorporate the statutory standard (as set forth in § 350.303(d)(2)(ii)) to ensure there is no discrepancy between statute and regulation.

*Section 350.207(a)(28) What conditions must a State meet to qualify for MCSAP funds?*

Comment: CVSA expressed support for the addition in proposed § 350.207(a)(28) that States document compliance with hazardous materials safety permit requirements in

the course of inspections they conduct. It noted, however, that States would need additional time to adopt 49 CFR part 385.

Response: FMCSA clarifies that the rule does not require States to adopt part 385, but States are strongly encouraged to do so to support a comprehensive CMV safety program. States must cooperate in the enforcement of hazardous materials safety permit requirements under part 385 by verifying possession of the permit when required while conducting vehicle inspections and investigations. States are not required, however, to investigate or enforce violations under part 385. This change fosters communication between States and FMCSA by having State enforcement personnel verify the presence of a hazardous materials safety permit, when required, during vehicle inspections and investigations that States conduct so FMCSA can take appropriate enforcement action when warranted. FMCSA revises the proposed regulatory text to clarify the requirement for States regarding hazardous materials safety permits.

*Section 350.211 What must a State include for the first year of the CVSP?*

Comment: CVSA opposed removing the requirement that a State submit a training plan as part of the CVSP process. It stated that training for inspectors is critical to a uniform, effective national inspection program and that currently inspectors do not receive enough training. CVSA said that removing the requirement could result in a jurisdiction putting less focus on training, impacting both the State's program and the national program negatively.

Response: FMCSA disagrees. While the existing regulations include a requirement for States to include training plans, the electronic commercial vehicle safety plan (eCVSP) does not include the training plans, and has not since the eCVSP's

implementation in 2013. At that time, a direct reporting process between the States and the National Training Center replaced the State training plans. FMCSA has not observed adverse effects on inspector training because of the direct reporting process. FMCSA will include information in the annual MCSAP application announcement indicating how a State may report its training plan to the National Training Center if the State wishes to do so.

*Section 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?*

Comment: Section 350.219 clarifies the grant funding distribution process the Administrator may use in the event of an extension of FMCSA's authorization or a continuing resolution impacting the Agency's budget. CVSA stated that it does not object to the proposed approach, but requested that FMCSA add a specific authority citation for clarity. CVSA also requested examples of when and how FMCSA applied this authority in the past.

Response: Adding a specific authority citation to § 350.219 would not clarify the distribution process the Administrator may use in the event of an extension of the Agency's authorization or during a period the Agency operates under a continuing resolution. As stated in the NPRM, the Administrator's discretion to distribute funds in such situations is found generally in 49 U.S.C. 31102. Section 31102 authorizes the Secretary to administer MCSAP. The Secretary's authority is delegated to FMCSA's Administrator in 49 CFR 1.87(f).

## **VII. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States Territories). Motor carriers and drivers are

subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

## **VIII. SECTION-BY-SECTION ANALYSIS**

Unless explicitly set forth below, FMCSA adopts the sections as proposed in the August 22, 2019 NPRM. The Agency makes some revisions in response to comments and to correct regulatory language not aligned with its underlying statutory authority. Otherwise, the final rule makes only minor editorial and grammatical changes to improve clarity or readability, use consistent phrases, conform style, or correct typographical errors.

### **A. Subpart A—General**

Subpart A provides a general overview and defines the terms used in part 350, applicable to both MCSAP and the High Priority Program.

#### **§ 350.101 What is the purpose of this part?**

FMCSA adopts § 350.101 as proposed.

#### **§ 350.103 When do the financial assistance program changes take effect?**

The Agency revises § 350.103 to provide that the changes to the financial assistance programs take effect for FY 2021, which begins on October 1, 2020, rather than for FY 2020 as proposed. This change accounts for the timing of the issuance of this rule, which is too late to allow for use of the new MCSAP formula in time for FY 2020 grants. FMCSA removes the qualifier “[u]nless otherwise provided” because there are now no effective dates other than October 1, 2020 provided in part 350. FMCSA adds “financial assistance funds and beyond” at the end of the section to clarify that the

changes will continue in effect for financial assistance funds awarded in subsequent fiscal years.

**§ 350.105 What definitions are used in this part?**

The Agency adds a sentence in the introductory paragraph to remind readers that terms used in part 350 but not defined in § 350.105 are subject to the definitions in 49 CFR part 390.

With the exceptions discussed below, FMCSA adopts the definitions as proposed with only minor editorial changes.

FMCSA revises the definition of “compatible or compatibility” to align with and incorporate the standard in 49 U.S.C. 31141(c) regarding when a State may enforce a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs. In paragraph (1) pertaining to interstate commerce not involving hazardous materials, the standard of paragraph (1) of proposed § 350.105 becomes subparagraph (i). New subparagraph (ii) addresses State provisions that are in addition to or more stringent than the FMCSRs. When read together, the definition defines these particular State provisions as compatible with the FMCSRs when (1) they are identical to or have the same effect as the FMCSRs, or (2) if in addition to or more stringent than the FMCSRs, they have a safety benefit, do not unreasonably frustrate the Federal goal of uniformity, and do not cause an unreasonable burden on interstate commerce when enforced. In paragraph (2)(ii) pertaining to intrastate commerce not involving hazardous materials, FMCSA removes and replaces “subpart C of this part” with “§ 350.305 or § 350.307” to more specifically identify the sections addressing intrastate variances. The Agency adds language in paragraphs (1) and (2) to clarify that the standards apply only to



commerce “not involving the movement of hazardous materials.” Paragraph (3) remains as proposed.

As explained above, the Agency changes the definition of “North American Standard Inspection” to continue use of the definition in existing § 350.105. The definition reads: “*North American Standard Inspection* means the methodology used by State CMV safety inspectors to conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by FMCSA in conjunction with the Commercial Vehicle Safety Alliance (CVSA), which is an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting CMVs in their jurisdiction.”

In the definition of “State,” FMCSA adds the phrase “unless otherwise specified in this part” to emphasize that “State” is defined differently in some sections.

## **B. Subpart B—MCSAP Administration**

Subpart B provides an overview of MCSAP only. FMCSA revises the title to use the defined acronym for the Motor Carrier Safety Assistance Program.

### **§ 350.201 What is MCSAP?**

In § 350.201(b), the Agency changes the paragraph title to “MCSAP purpose” to reflect, as explained above, that this section is a restatement of existing § 350.103 about the purpose of part 350, which restates the goals of MCSAP in 49 U.S.C. 31102(b). In addition, FMCSA replaces the phrase “MCSAP requires States to” with a slightly modified version of the introductory paragraph in current § 350.103 regarding the purposes of part 350, to correct the unintentional appearance of imposing new requirements on States to receive MCSAP funds. The introductory language reads: “The

purpose of MCSAP is to ensure FMCSA and States, local government agencies, other political jurisdictions, Federally-recognized Indian Tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—.” The Agency also makes conforming grammatical changes. Finally, FMCSA removes the phrases “consistent with Federal requirements” and “regulations and practices” from proposed paragraph (b)(3) and uses the defined term “compatible” and the phrase “laws, regulations, standards, and orders” to ensure consistent use of defined terms and phrases in part 350. Paragraph (b)(3) reads: “Adopting and enforcing effective and compatible (as defined in § 350.105 of this part) motor carrier, CMV, and driver safety laws, regulations, standards, and orders.”

**§ 350.203 What are the national MCSAP elements?**

FMCSA adopts § 350.203 as proposed.

**§ 350.205 What entities are eligible for funding under MCSAP?**

FMCSA adopts § 350.205 as proposed.

**§ 350.207 What conditions must a State meet to qualify for MCSAP funds?**

In § 350.207(a)(2), the Agency adds a cross reference to § 350.105 for the definition of “compatible.” In § 350.207(a)(6), FMCSA clarifies that the Lead State Agency must give satisfactory assurances in the CVSP that the Lead State Agency “and any subrecipient of MCSAP funds” has the legal authority, resources, and qualified personnel necessary to enforce compatible laws, regulations, standards, and orders on CMV safety, consistent with current MCSAP requirements. As explained above, FMCSA also adds language in paragraph (a)(6) to clarify that only MCSAP-funded personnel

certified in accordance with 49 CFR part 385, subpart C, may perform inspections, audits, and investigations. In § 350.207(a)(28), the Agency clarifies that a State's requirement with respect to hazardous materials safety permits is limited to verifying possession of the permit when required while conducting vehicle inspections and investigations, as applicable.

**§ 350.209 How and when does a State apply for MCSAP funds using a CVSP?**

FMCSA changes the words “MCSAP application memorandum” to “MCSAP application announcement” in § 350.209(b).

**§ 350.211 What must a State include for the first year of the CVSP?**

FMCSA changes the beginning of several paragraphs from “The first year of the CVSP . . .” to “For the first year of the CVSP, . . .”, with conforming changes to the sentences, for consistency across the sections. In § 350.211(a)(1) and (k), the Agency changes the words “MCSAP application memorandum” to “MCSAP application announcement.” In § 350.211(i)(1)(ii), FMCSA changes the phrase “the State maintains required compatibility” to “State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part)” to have consistent terminology with § 350.213(e)(1)(ii). Finally, in paragraph (j), the Agency changes the phrase “that was enacted by the State since the last CVSP or annual update was submitted” to “that was enacted by the State since the prior year's submission” to use consistent terminology in the sections and avoid confusion.

**§ 350.213 What must a State include for the second and third years of the CVSP?**

In § 350.213(a), FMCSA changes “a State must submit” to “a Lead State Agency must submit” to use consistent terminology in the sections. In § 350.213(a) and (g), the

Agency changes the words “MCSAP application memorandum” to “MCSAP application announcement.” The Agency changes the words “prior year’s CVSP” in paragraph (a) and “last CVSP or annual update was submitted” in paragraph (f) to “prior year’s submission” to use consistent terminology in the sections and avoid confusion. In § 350.213(e)(1)(ii), FMCSA adds a cross reference to § 350.105 for the definition of “compatible.”

#### **§ 350.215 What response does a State receive to its CVSP?**

FMCSA changes the section title for clarity. In § 350.215(a)(1)(ii)(B), the Agency adds a cross reference to § 350.105 for the definition of “compatible.” Also, some of the regulatory text detailing the Agency response to the annual update submission was inadvertently left out of paragraph (b)(1). FMCSA adds the phrase “because the annual update” as a lead-in to new paragraphs (A) and (B) in § 350.215(b)(1)(ii), which features the same language as in § 350.215(a)(1)(ii) related to the Agency response for the first year of the CVSP.

#### **§ 350.217 How are MCSAP funds allocated?**

In § 350.217(e), the Agency makes minor edits to clarify how the hold-harmless provision and funding cap are calculated. FMCSA adds the quoted language to paragraph (1) to clarify that the dollar amounts calculated under paragraphs (c)(6) and (d)(5) of § 350.217 will be totaled “for each State” and then divided by the total MCSAP funds “available for allocation under paragraphs (c) and (d) of this section” to determine a State’s percentage of the total MCSAP funds. In paragraph (2), the Agency changes the location of the word “total” at the beginning of the paragraph so the text reads “percentage of total MCSAP funding.” FMCSA also clarifies that the total MCSAP

funding in the prior year does not include amounts allocated to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands. In paragraph (3), the Agency adds a cross reference to clarify the State’s percentage of MCSAP funds allocated for the prior fiscal year is “as calculated under paragraph (e)(2) of this section.”

**§ 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA’s authorization?**

In § 350.219, FMCSA deletes the words “appropriations act” after “continuing resolution” in the title and introductory clause of the section.

**§ 350.221 How long are MCSAP funds available to a State?**

FMCSA adopts § 350.221 as proposed.

**§ 350.223 What are the Federal and State shares of costs incurred under MCSAP?**

FMCSA changes the words “FMCSA policy” to “the MCSAP application announcement” in § 350.223(b)(1) and (2) to clarify where States can find eligible costs. FMCSA also changes the words “MCSAP application memorandum” to “MCSAP application announcement” in § 350.223(c)(2)(i).

**§ 350.225 What MOE must a State maintain to qualify for MCSAP funds?**

In the introductory paragraph of § 350.225(a), FMCSA deletes the phrase “equal to the average aggregate expenditure of the Lead State Agency” because it is redundant. Section 350.225 reflects, in paragraphs (a)(2) and (e), that the grants issued for FY 2021 will be the first year of grants using the new MCSAP allocation formula. Paragraph (b)(5) now includes a cross reference to § 350.223 to further clarify that the MOE calculation excludes a State’s matching funds. Paragraph (c) now includes

clarifying language regarding eligible costs for the calculation of the MOE and expenditures under the current MOE.

**§ 350.227 What activities are eligible for reimbursement under MCSAP?**

In § 350.227(c), FMCSA separates the introductory paragraph into paragraph (1) to provide the provisions for State traffic laws and regulations relating to CMVs and a paragraph (2) for those provisions relating to non-CMV, to clarify that the qualifications for reimbursement of traffic enforcement activities apply only to enforcement of laws and regulations relating to non-CMV. In doing so, FMCSA moves the phrase “when necessary to promote the safe operation of CMVs” to a new paragraph (c)(2)(i) to further clarify that it is a qualification for reimbursement. The Agency redesignates the following paragraphs accordingly. With the addition of the new paragraph (c)(2)(i), FMCSA deletes the redundant phrase “when necessary to promote the safe operation of CMVs” in paragraph (c)(2)(iii).

**§ 350.229 What specific costs are eligible for reimbursement under MCSAP?**

In § 350.229(a), FMCSA deletes the words “FMCSA policy,” changes the words “MCSAP application memorandum” to “MCSAP application announcement,” and clarifies where States can find eligible costs. In paragraph (b), FMCSA changes the words “MCSAP application memorandum” to “MCSAP application announcement.”

**§ 350.231 What are the consequences for failure to meet MCSAP conditions?**

FMCSA adopts § 350.231 as proposed.

**C. Subpart C—MCSAP-Required Compatibility Review**

Subpart C includes information related to the MCSAP-required compatibility review and variances for intrastate commerce available to States participating in MCSAP.

### **§ 350.301 What is the purpose of this subpart?**

In the introductory paragraph, FMCSA adds a cross reference to § 350.105 for the definition of “compatibility.”

### **§ 350.303 How does a State ensure compatibility?**

In § 350.303(a), FMCSA adds a cross reference to § 350.105 for the definition of “compatibility.” FMCSA revises paragraph (d) to conform to that definition in substance and organization by setting forth the standards applicable to each type of commerce in separate paragraphs, and to use the terms “compatible” and “compatibility” consistently. FMCSA moves proposed paragraph (d)(2)(i) to paragraph (d)(1) with minor edits. The Agency specifies that the State must determine whether its laws, regulations, standards, and orders are identical to or have the same effect as, are in addition to or more stringent than, or are less stringent than the FMCSRs, or are identical to the HMRs. FMCSA removes the words “corresponding provision of” and “provisions of,” as they are unnecessary.

In paragraph (d)(2), FMCSA adds an introductory clause providing that the paragraph applies to interstate commerce not involving the movement of hazardous materials. To align the regulations with the underlying statutory authority as mentioned above, the Agency revises and renumbers proposed paragraphs (d)(2)(ii) through (d)(2)(iv) as paragraphs (d)(2)(i) through (d)(2)(iii) to address the enforceability of State provisions that are identical to or have the same effect as, are in addition to or more stringent than, and are less stringent than the FMCSRs, each in its own separate paragraph. In paragraph (d)(2)(ii) (relating to State provisions that are in addition to or more stringent than the FMCSRs), FMCSA changes the language from “[i]t is compatible

with the FMCSRs” to “does not unreasonably frustrate the Federal goal of uniformity.” In paragraph (d)(2)(iii) (relating to State provisions that are less stringent than the FMCSRs), the Agency removes the proposed language providing “unless it falls within the provisions of §§ 350.305 or 350.307” and moves it to paragraph (d)(3)(ii) because it is only applicable to intrastate commerce not involving the movement of hazardous materials.

The Agency adds paragraph (d)(3) to create a separate paragraph that addresses State provisions applicable to intrastate commerce not involving hazardous materials to conform to the definition and organization of “compatible” in § 350.105. In the new paragraph, FMCSA separates into paragraphs (d)(3)(i) and (d)(3)(ii) the standard for State provisions that are identical to or have the same effect as the FMCSRs and the standard for those that differ from the FMCSRs, respectively. The Agency redesignates the following subparagraphs in paragraph (d) accordingly.

Paragraph (d)(4) provides the standard applicable to interstate and intrastate commerce involving the movement of hazardous materials.

Finally, in paragraph (g)(3), the Agency changes the words “State or person” to “petitioner” for clarity.

**§ 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?**

FMCSA revises the title of this section to improve readability and emphasize that variances are only available for State provisions applicable to intrastate commerce.

Otherwise, FMCSA adopts § 350.305 as proposed with only minor editorial changes.



**§ 350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?**

FMCSA revises the title of this section to improve readability. Otherwise, FMCSA adopts § 350.307 as proposed with only minor editorial changes.

**§ 350.309 What are the consequences if a State has provisions that are not compatible?**

In § 350.309(a), FMCSA adds a cross reference to § 350.105 for the definition of “compatible.”

**D. Subpart D—High Priority Program**

Subpart D describes the High Priority Program.

**§ 350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?**

FMCSA adds to the section title “and what entities are eligible for funding under the High Priority Program” to indicate the section also identifies the eligible entities. Otherwise, FMCSA adopts § 350.401 as proposed with only a minor editorial change.

**§ 350.403 What are the High Priority Program objectives?**

In § 350.403(e) and (f), FMCSA deletes the phrase “safety data improvement projects” to align with the authorizing statute. Section 350.403(g) already includes “safety data improvement projects;” accordingly, inclusion of the phrase in § 350.403(e) and (f) is duplicative and confusing for the reader.

In § 350.403(h), FMCSA adds the phrase “by States” to clarify that Innovative Technology Deployment funds only may be given to States, in accordance with the authorizing statute. In paragraph (i), FMCSA changes the conjunction “and” to “or” to clarify a High Priority Program project only needs to include one, not all, of the objectives.

**§ 350.405 What conditions must an applicant meet to qualify for High Priority Program funds?**

FMCSA reorganizes § 350.405 so the High Priority Program eligibility requirements for funds related to motor carrier safety activities for States are in paragraph (a)(1) and applicants other than States are in paragraph (a)(2). Conforming changes are made to the numbering of the paragraphs. In paragraph (b), FMCSA adds the eligibility requirements States must satisfy to qualify for High Priority Program funds for Innovative Technology Deployment activities set forth at 49 U.S.C. 31102(1)(3)(C). FMCSA believes it will be more convenient for applicants to have all the eligibility requirements for High Priority Program funds in one location and to know them prior to the availability of the NOFO.

**§ 350.407 How and when does an eligible entity apply for High Priority Program funds?**

FMCSA adds a sentence to clarify when an entity must apply for High Priority Program funds.

**§ 350.409 What response will an applicant receive under the High Priority Program?**

FMCSA adopts § 350.409 as proposed.

**§ 350.411 How long are High Priority Program funds available to a recipient?**

FMCSA revises the paragraph titles to correspond to § 350.405. Otherwise, FMCSA adopts § 350.411 as proposed with only minor editorial changes.

**§ 350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?**

In § 350.413(b), FMCSA removes the word “policy” and replaces it with the words “in the NOFO” to clarify where entities can find eligible costs.

**§350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?**

FMCSA adopts § 350.415 as proposed.

**§ 350.417 What specific costs are eligible for reimbursement under the High Priority Program?**

FMCSA adopts § 350.417 as proposed.

**E. Miscellaneous**

FMCSA removes and reserves part 355 of title 49 of the CFR (Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations) as proposed. FMCSA also removes and reserves part 388 (Cooperative Agreements with States) as proposed.

**X. REGULATORY ANALYSES**

**A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations**

The Office of Information and Regulatory Affairs determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (84 FR 71714, Dec. 27, 2019).

The purpose of the rule is to amend and reorganize 49 CFR part 350, including adding relevant sections that are currently located in part 355. Certain regulations are no longer necessary or are redundant. Moreover, the FAST Act requires FMCSA to

implement a multi-year CVSP with annual updates for States applying for MCSAP funds and to provide a new MCSAP allocation formula. The new MCSAP formula helps the Federal Government operate more efficiently by establishing a reallocation of grant funds based on changes in safety factors. The new formula reallocates FY 2021 grant funding, but does not change the total amount of funds distributed. States are the only affected entities of this rule.

The new MCSAP allocation formula replaces the current formula that has been in use for more than a decade with little modification and makes several improvements over the current formula. The basis of the new formula is a careful statistical analysis of the relationship between numerous highway safety variables, crashes, and fatalities. While this analysis revealed that several of the existing formula factors (e.g., special fuel consumption and population) remain highly correlated with crashes, newer data are available to more closely link the allocation of funding to safety risk.

The formula discontinues the use of Incentive Funds. Instead, the formula allocates funds primarily based on the calculation of the applicable highway and safety factors. Mitigation measures ensure that State funding levels do not fluctuate substantially from year to year. Specifically, subject to the availability of funding, a State would not have a decrease of more than 3 percent, or an increase of more than 5 percent, compared to its share of the formula grant calculation in the previous year.<sup>4</sup> This provides the State a degree of predictability to aid in budget planning, while still allowing for fair allocation of funds based on changes in safety factors.

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<sup>4</sup> In this respect, the States, the District of Columbia, and the Commonwealth of Puerto Rico are treated differently than the remaining Territories. The U.S. Census Bureau does not provide annual population estimates for Territories other than the Commonwealth of Puerto Rico. Thus, these percentage limitations governing funding levels do not apply to these Territories.

The new MCSAP formula results in a reallocation of grant funding but will not change the total amount of funds distributed and will not impose or reduce any costs associated with the program.

FMCSA clarifies that it is a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers as required under subpart E of 49 CFR part 385. The rule requires States to verify possession of the permit when required while conducting vehicle inspections and investigations. State officials already receive training on subpart E of part 385; therefore, FMCSA estimates that no new costs or benefits result from this clarification.

The rule requires States to use CVSPs in accordance with the FAST Act. The rule provides direction to States on how and when to submit CVSPs, which are on 3-year cycles. Under the current regulations, States must submit lengthy annual CVSP applications to receive MCSAP funding. This rule requires States to submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years, resulting in a decrease in costs, or a cost savings, for States and FMCSA. Specifically, for the first year of the CVSP, States submit information regarding performance goals, past performance, and other documents traditionally provided in an annual CVSP. For the second and third years of the CVSP, States submit an annual update that includes a budget for the applicable fiscal year, changes to the CVSP, and other documents required on an annual basis. In response to comments from CVSA, these changes are implemented for FY 2021 and not FY 2020 grant funds, as proposed. This adjustment is to account for the timing of this final rule.

The rule eliminates the exception to adopt §§ 171.15 and 171.16 in the HMRs by States participating in MCSAP. These provisions require reporting of certain hazardous materials incidents. This rule allows States to ensure compliance with these provisions during the course of investigations, but does not require States to conduct investigations. Additionally, eliminating the exception does not expand the incident reporting burden. State officials already receive investigation training, which includes training on enforcement of §§ 171.15 and 171.16. Therefore, FMCSA estimates that no new costs or benefits result from this exception elimination.

**B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)**

E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, does not apply to this action because it is a nonsignificant regulatory action, as defined in section 3(f) of E.O. 12866, and has zero costs; therefore, it is not subject to the “2 for 1” and budgeting requirements.<sup>5</sup>

**C. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).<sup>6</sup>

**D. Regulatory Flexibility Act**

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<sup>5</sup> Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs*. 82 FR 9339-9341. February 3, 2017.

<sup>6</sup> A “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857 (Mar. 29, 1996), note following 5 U.S.C. 601), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term “small entities” means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601(6)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule primarily affects States applying for MCSAP funds due to the new MCSAP allocation formula governing distribution of MCSAP funds and the requirement to submit CVSPs on a 3-year cycle. States are not small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not small governmental jurisdictions under section 601(5) of the RFA, both because State government is not among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia and the 5 Territories, has a population of less than 50,000, which is the criterion to be a small governmental jurisdiction under section 601(5) of the RFA.

Although States would not be small entities, there is a possibility that other entities that may be grant program applicants could be small entities. These other entities include local governments, Federally-recognized Indian Tribes, other political

jurisdictions, universities, non-profit organizations, and other persons who, although not eligible for MCSAP funds, which are designated for States, would be eligible for funding under the High Priority Program. However, the impact of the rule results from changes to MCSAP, which do not affect the High Priority Program applicants. As such, FMCSA has determined that these non-State entities would not experience economic impacts as a result of the rule.

In summary, this rule only impacts States, including the District of Columbia and the 5 Territories, which are not small entities. The rule thus does not have a significant economic impact on the regulated entities, and does not significantly impact a substantial number of small entities. Accordingly, I certify that the action does not have a significant economic impact on a substantial number of small entities.

**E. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Jack Kostelnik, listed in the **For Further Information Contact** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The



Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**F. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$165 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

**G. Paperwork Reduction Act**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The Agency notes that MCSAP applications are not subject to OMB’s standard application requirements pursuant to 2 CFR 1201.206. Entities apply for the Agency’s other financial assistance programs using standardized forms found in grants.gov, which account for any information collection burden and are not impacted by this rule.

**H. E.O. 13132 (Federalism)**

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this rule does not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

## **I. Privacy**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, 118 Stat. 2809, 3268 (Dec. 8, 2004), note following 5 U.S.C. 552a), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this rule does not require the collection of individual personally identifiable information.

Additionally, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking to the DOT, Office of the Secretary’s Privacy Office. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002 (Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002)), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates

information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this rule.

**J. E.O. 13175 (Indian Tribal Governments)**

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

**K. National Environmental Policy Act of 1969**

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraphs 6.f. and 6.g. The Categorical Exclusions (CEs) in paragraphs 6.f. and 6.g. cover regulations implementing activities, whether performed by FMCSA or by States pursuant to MCSAP, and procedures to promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs and HMRS, and procedures to provide guidelines for a continuous regulatory review of State laws and regulations. These CEs cover the requirements in this rule and the rule does not have any effect on the quality of the environment.

## **List of Subjects**

### **49 CFR 350**

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements

### **49 CFR 355**

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements

### **49 CFR 388**

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as follows:

1. Revise part 350 to read as follows:

## **PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP) AND HIGH PRIORITY PROGRAM**

### **Subpart A—General**

Sec.

350.101 What is the purpose of this part?

350.103 When do the financial assistance program changes take effect?

350.105 What definitions are used in this part?

### **Subpart B—MCSAP Administration**

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350.205 What entities are eligible for funding under MCSAP?

350.207 What conditions must a State meet to qualify for MCSAP funds?

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350.217 How are MCSAP funds allocated?

- 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA’s authorization?
- 350.221 How long are MCSAP funds available to a State?
- 350.223 What are the Federal and State shares of costs incurred under MCSAP?
- 350.225 What MOE must a State maintain to qualify for MCSAP funds?
- 350.227 What activities are eligible for reimbursement under MCSAP?
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- 350.301 What is the purpose of this subpart?
- 350.303 How does a State ensure compatibility?
- 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?
- 350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?
- 350.309 What are the consequences if a State has provisions that are not compatible?

**Subpart D—High Priority Program**

- 350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?
- 350.403 What are the High Priority Program objectives?
- 350.405 What conditions must an applicant meet to qualify for High Priority Program funds?
- 350.407 How and when does an eligible entity apply for High Priority Program funds?
- 350.409 What response will an applicant receive under the High Priority Program?
- 350.411 How long are High Priority Program funds available to a recipient?
- 350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?
- 350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?
- 350.417 What specific costs are eligible for reimbursement under the High Priority Program?

**Authority:** 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141, 31161, 31310, 31311, 31502; secs. 5106 and 5107, Pub. L. 114-94, 129 Stat. 1312, 1530; and 49 CFR 1.87.

**Subpart A—General**

**§ 350.101 What is the purpose of this part?**

The purpose of this part is to provide direction for entities seeking MCSAP or High Priority Program funding to improve motor carrier, CMV, and driver safety.

**§ 350.103 When do the financial assistance program changes take effect?**

The changes to the FMCSA financial assistance programs under this part take effect for fiscal year 2021 (beginning October 1, 2020) financial assistance funds and beyond.

**§ 350.105 What definitions are used in this part?**

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR part 390. As used in this part:

*Administrative takedown funds* means funds FMCSA deducts each fiscal year from the amounts made available for MCSAP and the High Priority Program for expenses incurred by FMCSA for training State and local government employees and for the administration of the programs.

*Administrator* means the administrator of FMCSA.

*Border State* means a State that shares a land border with Canada or Mexico.

*Commercial motor vehicle (CMV)* means a motor vehicle that has any of the following characteristics:

(1) A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of 4,537 kilograms (10,001 pounds) or more.

(2) Regardless of weight, is designed or used to transport 16 or more passengers, including the driver.

(3) Regardless of weight, is used in the transportation of hazardous materials and is required to be placarded pursuant to 49 CFR part 172, subpart F.

*Commercial vehicle safety plan (CVSP)* means a State's CMV safety objectives, strategies, activities, and performance measures that cover a 3-year period, including the submission of the CVSP for the first year and annual updates thereto for the second and third years.

*Compatible or compatibility* means State laws, regulations, standards, and orders on CMV safety that:

(1) As applicable to interstate commerce not involving the movement of hazardous materials:

(i) Are identical to or have the same effect as the FMCSRs; or

(ii) If in addition to or more stringent than the FMCSRs, have a safety benefit, do not unreasonably frustrate the Federal goal of uniformity, and do not cause an unreasonable burden on interstate commerce when enforced;

(2) As applicable to intrastate commerce not involving the movement of hazardous materials:

(i) Are identical to or have the same effect as the FMCSRs; or

(ii) Fall within the limited variances from the FMCSRs allowed under § 350.305 or § 350.307; and

(3) As applicable to interstate and intrastate commerce involving the movement of hazardous materials, are identical to the HMRs.

*FMCSA* means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

*FMCSRs* means:

- (1) The Federal Motor Carrier Safety Regulations under parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter; and
- (2) Applicable standards and orders issued under these provisions.

*HMRs* means:

- (1) The Federal Hazardous Materials Regulations under subparts F and G of part 107, and parts 171, 172, 173, 177, 178, and 180 of this title; and
- (2) Applicable standards and orders issued under these provisions.

*High Priority Program funds* means total funds available for the High Priority Program, less the administrative takedown funds.

*Investigation* means an examination of motor carrier operations and records, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, crashes, hazardous materials, and other safety and transportation records, to determine whether a motor carrier meets safety standards, including the safety fitness standard under § 385.5 of this subchapter, or, for intrastate motor carrier operations, the applicable State standard.

*Lead State Agency* means the State CMV safety agency responsible for administering the CVSP throughout a State.

*Maintenance of effort (MOE)* means the level of a State's financial expenditures, other than the required match, the Lead State Agency is required to expend each fiscal year in accordance with § 350.225.

*Motor carrier* means a for-hire motor carrier or private motor carrier. The term includes a motor carrier's agents, officers, and representatives, as well as employees



responsible for hiring, supervising, training, assigning, or dispatching a driver or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

*Motor Carrier Safety Assistance Program (MCSAP) funds* means total formula grant funds available for MCSAP, less the administrative takedown funds.

*New entrant safety audit* means the safety audit of an interstate motor carrier that is required as a condition of MCSAP eligibility under § 350.207(a)(26), and, at the State's discretion, an intrastate new entrant motor carrier under 49 U.S.C. 31144(g) that is conducted in accordance with subpart D of part 385 of this subchapter.

*North American Standard Inspection* means the methodology used by State CMV safety inspectors to conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by FMCSA in conjunction with the Commercial Vehicle Safety Alliance (CVSA), which is an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting CMVs in their jurisdiction.

*State* means a State of the United States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, unless otherwise specified in this part.

*Traffic enforcement* means the stopping of vehicles operating on highways for moving violations of State, Tribal, or local motor vehicle or traffic laws by State, Tribal, or local officials.

## **Subpart B—MCSAP Administration**

### **§ 350.201 What is MCSAP?**

(a) *General.* MCSAP is a Federal formula grant program that provides financial assistance to States to reduce the number and severity of crashes, and resulting injuries and fatalities, involving CMVs and to promote the safe transportation of passengers and hazardous materials. The goal of MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs that include driver or vehicle inspections, traffic enforcement, carrier investigations, new entrant safety audits, border enforcement, safety data improvements, and Performance and Registration Information Systems Management (PRISM).

(b) *MCSAP purpose.* The purpose of MCSAP is to ensure FMCSA and States, local government agencies, other political jurisdictions, Federally-recognized Indian Tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—

(1) Making targeted investments to promote safe CMV transportation, including transportation of passengers and hazardous materials;

(2) Investing in activities likely to generate maximum reductions in the number and severity of CMV crashes and in fatalities resulting from CMV crashes;

(3) Adopting and enforcing effective and compatible (as defined in § 350.105 of this part) motor carrier, CMV, and driver safety laws, regulations, standards, and orders; and

(4) Assessing and improving State-wide performance of motor carrier, CMV, and driver safety by setting program goals and meeting performance standards, measurements, and benchmarks.

(c) *State participation.* MCSAP sets conditions of participation for States and promotes the adoption and uniform enforcement of compatible laws, regulations, standards, and orders on CMV safety.

**§ 350.203 What are the national MCSAP elements?**

The national MCSAP elements are:

- (a) Driver inspections;
- (b) Vehicle inspections;
- (c) Traffic enforcement;
- (d) Investigations;
- (e) New entrant safety audits;
- (f) CMV safety programs focusing on international commerce in border States;
- (g) Beginning October 1, 2020, full participation in PRISM or an acceptable alternative as determined by the Administrator;
- (h) Accurate, complete, timely, and corrected data;
- (i) Public education and awareness; and
- (j) Other elements that may be prescribed by the Administrator.

**§ 350.205 What entities are eligible for funding under MCSAP?**

Only States are eligible to receive MCSAP grants directly from FMCSA.

**§ 350.207 What conditions must a State meet to qualify for MCSAP funds?**

- (a) *General.* To qualify for MCSAP funds, a State must:
  - (1) Designate a Lead State Agency;
  - (2) Assume responsibility for improving motor carrier safety by adopting and enforcing compatible (as defined in § 350.105 of this part) laws, regulations, standards,

and orders on CMV safety, except as may be determined by the Administrator to be inapplicable to a State enforcement program;

(3) Ensure that the State will cooperate in the enforcement of financial responsibility requirements under part 387 of this subchapter;

(4) Provide that the State will enforce the registration requirements under 49 U.S.C. 13902 and 31134 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under those sections or operated beyond the scope of the motor carrier's registration;

(5) Provide a right of entry (or other method a State may use that is adequate to obtain necessary information) and inspection to carry out the CVSP;

(6) Give satisfactory assurances in its CVSP that the Lead State Agency and any subrecipient of MCSAP funds have the legal authority, resources, and qualified personnel (including individuals certified in accordance with 49 CFR part 385, subpart C, to perform inspections, audits, and investigations) necessary to enforce compatible laws, regulations, standards, and orders on CMV safety;

(7) Provide satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic laws and regulations on CMV safety;

(8) Give satisfactory assurances that the State will devote adequate resources to the administration of the CVSP throughout the State, including the enforcement of compatible laws, regulations, standards, and orders on CMV safety;

(9) Provide that the MOE of the Lead State Agency will be maintained each fiscal year in accordance with § 350.225;

(10) Provide that all reports required in the CVSP be available to FMCSA upon request, meet the reporting requirements, and use the forms for recordkeeping, inspections, and investigations that FMCSA prescribes;

(11) Implement performance-based activities, including deployment and maintenance of technology, to enhance the efficiency and effectiveness of CMV safety programs;

(12) Establish and dedicate sufficient resources to a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and to ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA;

(13) Ensure that the Lead State Agency will coordinate the CVSP, data collection, and information systems with the State highway safety improvement program under 23 U.S.C. 148(c);

(14) Ensure participation in information technology and data systems as required by FMCSA for jurisdictions receiving MCSAP funding;

(15) Ensure that information is exchanged with other States in a timely manner;

(16) Grant maximum reciprocity for inspections conducted under the North American Standard Inspection Program through the use of a nationally accepted system that allows ready identification of previously inspected CMVs;

(17) Provide that the State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors;

(18) Ensure that driver or vehicle inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel;

(19) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a bus station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop (excluding a weigh station);

(20) Provide satisfactory assurances that the State will address activities in support of the national program elements listed in § 350.203, including activities:

(i) Aimed at removing impaired CMV drivers from the highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) Aimed at providing training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances; and

(iii) Related to criminal interdiction, including human trafficking, when conducted with an appropriate CMV inspection and appropriate strategies for carrying out those interdiction activities, including interdiction activities that affect the transportation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) and listed in 21 CFR part 1308) by any occupant of a CMV;

(21) Ensure that detection of criminal activities and size and weight activities described in § 350.227(b), if financed through MCSAP funds, will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety;

(22) Ensure consistent, effective, and reasonable sanctions;

(23) Provide that the State will include in the training manuals for the licensing examinations to drive a CMV and non-CMV information on best practices for driving safely in the vicinity of CMVs and non-CMVs;

(24) Require all registrants of CMVs to demonstrate their knowledge of applicable FMCSRs, HMRs, or compatible State laws, regulations, standards, and orders on CMV safety;

(25) Ensure that the State transmits to inspectors the notice of each Federal exemption granted under subpart C of part 381 of this subchapter and §§ 390.23 and 390.25 of this subchapter that relieves a person or class of persons in whole or in part from compliance with the FMCSRs or HMRs that has been provided to the State by FMCSA and identifies the person or class of persons granted the exemption and any terms and conditions that apply to the exemption;

(26) Subject to paragraphs (b) and (c)(1) of this section, conduct new entrant safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers in accordance with subpart D of part 385 of this subchapter;

(27) Subject to paragraph (c)(2) of this section, beginning October 1, 2020, participate fully in PRISM by complying with the conditions for full participation, or receiving approval from the Administrator for an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety;

(28) Ensure that the State will cooperate in the enforcement of hazardous materials safety permits issued under subpart E of part 385 of this subchapter by

verifying possession of the permit when required while conducting vehicle inspections and investigations, as applicable; and

(29) For border States, conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects, or forfeit all funds allocated for border-related activities.

(b) *New entrant safety audits – Use of third parties.* If a State uses a third party to conduct new entrant safety audits under paragraph (a)(26) of this section, the State must verify the quality of the work and the State remains solely responsible for the management and oversight of the audits.

(c) *Territories.* (1) The new entrant safety audit requirement under paragraph (a)(26) does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The required PRISM participation date under paragraph (a)(27) of this section does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

### **§ 350.209 How and when does a State apply for MCSAP funds using a CVSP?**

(a) *MCSAP application submission format.* (1) The CVSP is a 3-year plan.

(2) The first year of the CVSP varies by State, depending on when the State implemented the CVSP.

(3) For the first year of the CVSP, the Lead State Agency must submit a CVSP projecting programs and projects covering 3 years and a budget for the first fiscal year for which the CVSP is submitted, as explained in § 350.211.



(4) For the second and third years of the CVSP, the Lead State Agency must submit an annual update and budget for that fiscal year and any other needed adjustments or changes to the CVSP, as explained in § 350.213.

(b) *MCSAP application submission deadline.* (1) The Lead State Agency must submit the first year of the CVSP, or the annual updates, to FMCSA by the date prescribed in the MCSAP application announcement for the fiscal year.

(2) The Administrator may extend for a period not exceeding 30 days the deadline prescribed in the MCSAP application announcement for document submission for good cause.

**§ 350.211 What must a State include for the first year of the CVSP?**

(a) *General.* (1) For the first year of the CVSP, the Lead State Agency must submit a CVSP that complies with the MCSAP application announcement and, at a minimum, provides a performance-based program with a general overview section that includes:

(i) A statement of the Lead State Agency's goal or mission; and

(ii) A program summary of the effectiveness of prior activities in reducing CMV crashes, injuries, and fatalities and in improving driver and motor carrier safety performance.

(2) The program summary must identify and address safety or performance problems in the State.

(3) The program summary must use 12-month data periods that are consistent from year to year. This may be a calendar year, fiscal year, or any 12-month period for which the State's data is current.

(4) The program summary must show trends supported by safety and program performance data collected over several years.

(b) *National MCSAP elements.* (1) For the first year of the CVSP, the Lead State Agency must include a brief narrative describing how the State CVSP addresses the national program elements listed in § 350.203.

(2) The CVSP must address each national program element even if there are no planned activities in a program area.

(c) *Resource allocation.* For the first year of the CVSP, the Lead State Agency must explain the rationale for the State's resource allocation decisions.

(d) *Specific activities.* For the first year of the CVSP, the Lead State Agency must have a narrative section that includes a description of how the CVSP supports:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances;

(3) Criminal interdiction activities and appropriate strategies for carrying out those interdiction activities, including human trafficking, and interdiction activities affecting the transportation of controlled substances by any occupant of a CMV; and

(4) Activities to enforce registration requirements and to cooperate in the enforcement of financial responsibility requirements under § 392.9a and part 387 of this subchapter.

(e) *Performance objectives.* For the first year of the CVSP, the Lead State Agency must include performance objectives, strategies, and activities stated in quantifiable terms, that are to be achieved through the CVSP.

(f) *Monitoring.* For the first year of the CVSP, the Lead State Agency must include a description of the State's method for ongoing monitoring of the progress of the CVSP.

(g) *Budget.* For the first year of the CVSP, the Lead State Agency must include a budget for that year that describes the expenditures for allocable costs, such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.229.

(h) *List of MCSAP contacts.* For the first year of the CVSP, the Lead State Agency must include a list of MCSAP contacts.

(i) *Certification.* (1) For the first year of the CVSP, the Lead State Agency must certify that it has:

(i) Met all the MCSAP conditions in § 350.207; and

(ii) Completed the annual review required by § 350.303 and determined that State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part).

(2) If a State law, regulation, standard, or order on CMV safety is no longer compatible, the certifying official must explain the State's plan to address the discrepancy.

(3) A certification under this paragraph must reflect that the certifying official has authority to make the certification on behalf of the State.

(j) *New or amended laws.* For the first year of the CVSP, the Lead State Agency must submit to FMCSA a copy of any new or amended law, regulation, standard, or order on CMV safety that was enacted by the State since the prior year's submission.

(k) *Further submissions.* For the first year of the CVSP, the Lead State Agency must also submit other information required, as described in the MCSAP application announcement for that fiscal year.

**§ 350.213 What must a State include for the second and third years of the CVSP?**

(a) *General.* For the second and third years of the CVSP, a Lead State Agency must submit an annual update that complies with the MCSAP application announcement and, at a minimum, must include program goals, certifications, and other information revised since the prior year's submission, and the items listed in paragraphs (b) to (g) of this section.

(b) *Budget.* For the second and third years of the CVSP, the Lead State Agency must include a budget that supports the applicable fiscal year of the CVSP and describes the expenditures for allocable costs, such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.229.

(c) *Resource allocation.* For the second and third years of the CVSP, the Lead State Agency must explain the rationale for the State's resource allocation decisions.

(d) *List of MCSAP contacts.* For the second and third years of the CVSP, the Lead State Agency must include a list of MCSAP contacts.

(e) *Certification.* (1) For the second and third years of the CVSP, the Lead State Agency must certify that it has:

(i) Met all the MCSAP conditions in § 350.207; and

(ii) Completed the annual review required by § 350.303 and determined that State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part).

(2) If a State law, regulation, standard, or order on CMV safety is no longer compatible, the certifying official must explain the State's plan to address the discrepancy.

(3) A certification under this paragraph must reflect that the certifying official has authority to make the certification on behalf of the State.

(f) *New or amended laws.* For the second and third years of the CVSP, the Lead State Agency must submit to FMCSA a copy of any new or amended law, regulation, standard, or order on CMV safety that the State enacted since the prior year's submission.

(g) *Further submissions.* For the second and third years of the CVSP, the Lead State Agency must submit other information required, as described in the MCSAP application announcement for that fiscal year.

### **§ 350.215 What response does a State receive to its CVSP?**

(a) *First year of the CVSP.* (1) FMCSA will notify the Lead State Agency within 30 days after FMCSA begins its review of the State's first year of the CVSP, including the budget, whether FMCSA:

(i) Approves the CVSP; or

(ii) Withholds approval because the CVSP:

(A) Does not meet the requirements of this part; or

(B) Is not adequate to ensure effective enforcement of compatible (as defined in § 350.105 of this part) laws, regulations, standards, and orders on CMV safety.

(2) If FMCSA withholds approval of the CVSP, FMCSA will give the Lead State Agency a written explanation of the reasons for withholding approval and allow the Lead State Agency to modify and resubmit the CVSP for approval.

(3) The Lead State Agency will have 30 days from the date of the notice under paragraph (a)(2) of this section to modify and resubmit the CVSP.

(4) Failure to resubmit the modified CVSP may delay funding or jeopardize MCSAP eligibility.

(5) Final disapproval of a resubmitted CVSP will result in disqualification for MCSAP funding for that fiscal year.

(b) *Annual update for the second or third year of the CVSP.* (1) FMCSA will notify the Lead State Agency within 30 days after FMCSA begins its review of the State's annual update, including the budget, whether FMCSA:

(i) Approves the annual update; or

(ii) Withholds approval because the annual update:

(A) Does not meet the requirements of this part; or

(B) Is not adequate to ensure effective enforcement of compatible laws, regulations, standards, and orders on CMV safety.

(2) If FMCSA withholds approval of the annual update, FMCSA will give the Lead State Agency a written explanation of the reasons for withholding approval and allow the Lead State Agency to modify and resubmit the annual update for approval.

(3) The Lead State Agency will have 30 days from the date of the notice under paragraph (b)(2) of this section to modify and resubmit the annual update.

(4) Failure to resubmit the modified annual update may delay funding or jeopardize MCSAP eligibility.

(5) Final disapproval of a resubmitted annual update will result in disqualification for MCSAP funding for that fiscal year.

(c) *Judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

### **§ 350.217 How are MCSAP funds allocated?**

(a) *General.* Subject to the availability of funding, FMCSA must allocate MCSAP funds to grantees with approved CVSPs in accordance with this section.

(b) *Territories – excluding the Commonwealth of Puerto Rico.* (1) Not more than 0.49 percent of the MCSAP funds may be allocated in accordance with this paragraph among the Territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(2) Half of the MCSAP funds available under paragraph (b)(1) of this section will be divided equally among the Territories.

(3) The remaining MCSAP funds available under paragraph (b)(1) of this section will be allocated among the Territories in a manner proportional to the Territories' populations, as reflected in the decennial census issued by the U.S. Census Bureau.

(4) The amounts calculated under paragraphs (b)(2) and (b)(3) of this section will be totaled for each Territory.

(5) The amounts calculated under paragraph (b)(4) of this section will be adjusted proportionally, based on population, to ensure that each Territory receives at least \$350,000.

(c) *Border States.* (1) Not more than 11 percent of the MCSAP funds may be allocated in accordance with this paragraph among border States that maintain a border enforcement program.

(2) The shares for each border State will be calculated based on the number of CMV crossings at each United States port of entry, as determined by the Bureau of Transportation Statistics, with each border State receiving:

(i) 1 share per 25,000 annual CMV crossings at each United States port of entry on the Mexican border, with a minimum of 8 shares for each port of entry; or

(ii) 1 share per 200,000 annual CMV crossings at each United States port of entry on the Canadian border, with a minimum of 0.25 share for each port of entry with more than 1,000 annual CMV crossings.

(3) The shares of all border States calculated under paragraph (c)(2) of this section will be totaled.

(4) Each individual border State's shares calculated under paragraph (c)(2) of this section will be divided by the total shares calculated in paragraph (c)(3) of this section.

(5) The percentages calculated in paragraph (c)(4) of this section will be adjusted proportionally to ensure that each border State receives at least 0.075 percent but no more than 55 percent of the total border allocation available under paragraph (c)(1) of this section.



(6) Each border State's percentage calculated in paragraph (c)(5) of this section will be multiplied by the total border allocation available under this paragraph to determine the dollar amount of the border State's allocation.

(7) To maintain eligibility for an allocation under this paragraph, a border State must maintain a border enforcement program, but may expend more or less than the amounts allocated under this paragraph for border activities. Failure to maintain a border enforcement program will result in forfeiture of all funds allocated under this paragraph, but will not affect the border State's allocation under paragraph (d) of this section.

(8) Allocations made under this paragraph are in addition to allocations made under paragraph (d) of this section.

(d) *States – including the Commonwealth of Puerto Rico.* (1)(i) At least 88.51 percent of the MCSAP funds must be allocated in accordance with this paragraph among the eligible States, including the Commonwealth of Puerto Rico, but excluding American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(ii) The amounts made available under paragraphs (b) and (c) of this section that are not allocated under those paragraphs must be added to the total amount to be allocated in accordance with this paragraph.

(iii) In the case of reallocation of funds under paragraph (c) of this section by a border State that no longer maintains a border enforcement program, no portion of the reallocated funds will be allocated to that border State.

(2) The amount available under paragraph (d)(1) of this section will be calculated based on each State's percentage of the national total for each of the following equally-weighted factors:

(i) National Highway System Road Length Miles, as reported by the Federal Highway Administration (FHWA);

(ii) All Vehicle Miles Traveled, as reported by the FHWA;

(iii) Population (annual census estimates), as issued by the U.S. Census Bureau;

(iv) Special Fuel Consumption, as reported by the FHWA; and

(v) Carrier Registrations, as determined by FMCSA, based on the physical State of the carrier, and calculated as the sum of interstate carriers and intrastate hazardous materials carriers.

(3) Each State's percentages calculated in paragraph (d)(2) of this section will be averaged.

(4) The percentage calculated in paragraph (d)(3) of this section will be adjusted proportionally to ensure that each State receives at least 0.44 percent but no more than 4.944 percent of the MCSAP funds available under paragraph (d)(1) of this section.

(5) Each State's percentage will be multiplied by the total MCSAP funds available under this paragraph to determine the dollar amount of the State's allocation.

(e) *Hold-harmless provision and funding cap.* (1) The dollar amounts calculated under paragraphs (c)(6) and (d)(5) of this section will be totaled for each State and then divided by the total MCSAP funds available for allocation under paragraphs (c) and (d) of this section to determine a State's percentage of the total MCSAP funds.

(2) Each State's percentage of total MCSAP funding in the fiscal year immediately prior to the year for which funding is being allocated will be determined by dividing the State's dollar allocation by the total MCSAP funding in that prior year, excluding funds allocated to the Territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(3) Proportional adjustments will be made to ensure that each State's percentage of MCSAP funds as calculated under paragraph (e)(1) of this section will be no less than 97 percent or more than 105 percent of the State's percentage of MCSAP funds allocated for the prior fiscal year as calculated under paragraph (e)(2) of this section.

(f) *Withholding.* (1) Allocations made under this section are subject to withholdings under § 350.231(d).

(2) Minimum or maximum allocations described in paragraphs (b), (c), and (d) of this section are to be applied prior to any reduction under § 350.231(d).

(3) State MCSAP funds affected by § 350.231(d) will be allocated to the unaffected States in accordance with paragraph (d) of this section.

(4) Paragraph (e) of this section does not apply after any reduction under § 350.231(d).

**§ 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?**

In the event of a continuing resolution or an extension of FMCSA's authorization, subject to the availability of funding, FMCSA may first issue grants to States that have the lowest percent of undelivered obligations of the previous Federal fiscal year's funding, or as otherwise determined by the Administrator.

**§ 350.221 How long are MCSAP funds available to a State?**

MCSAP funds obligated to a State will remain available for the Federal fiscal year that the funds are obligated and the next full Federal fiscal year.

**§ 350.223 What are the Federal and State shares of costs incurred under MCSAP?**

(a) *Federal share.* FMCSA will reimburse at least 85 percent of the eligible costs incurred under MCSAP.

(b) *Match.* (1) In-kind contributions are acceptable in meeting a State's matching share under MCSAP if they represent eligible costs, as established by 2 CFR parts 200 and 1201 and the MCSAP application announcement.

(2) States may use amounts generated under the Unified Carrier Registration Agreement as part of the State's match required for MCSAP, provided the amounts are not applied to the MOE required under § 350.225 and are spent on eligible costs, as established by 2 CFR parts 200 and 1201 and the MCSAP application announcement.

(c) *Waiver.* (1) The Administrator waives the requirement for the matching share under MCSAP for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(2) The Administrator reserves the right to reduce or waive the matching share under MCSAP for other States in any fiscal year:

(i) As announced in the MCSAP application announcement; or

(ii) As determined by the Administrator on a case-by-case basis.

**§ 350.225 What MOE must a State maintain to qualify for MCSAP funds?**

(a) *General.* Subject to paragraph (e) of this section, a State must maintain an MOE each fiscal year for CMV safety programs eligible for funding under this part at a level at least equal to:

(1) The average level of that expenditure for the base period of fiscal years 2004 and 2005; or

(2) The level of expenditure in fiscal year 2021, as adjusted under section 5107 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, 129 Stat. 1312, 1532-34 (2015)).

(b) *Calculation.* In determining a State's MOE, FMCSA:

(1) May allow the State to exclude State expenditures for Federally-sponsored demonstration and pilot CMV safety programs and strike forces;

(2) May allow the State to exclude expenditures for activities related to border enforcement and new entrant safety audits;

(3) May allow the State to use amounts generated under the Unified Carrier Registration Agreement, provided the amounts are not applied to the match required under § 350.223;

(4) Requires the State to exclude Federal funds; and

(5) Requires the State to exclude State matching funds required under § 350.223.

(c) *Costs.* (1) In calculating the MOE under paragraph (b) of this section, a State must include all eligible costs associated with activities performed during the base period by the Lead State Agency that receives funds under this part.

(2) In its annual MOE, a State must include only those activities that meet the current requirements for funding eligibility under MCSAP.

(d) *Waivers and modifications.* (1) If a State requests, FMCSA may waive or modify the State's obligation to meet its MOE for a fiscal year if FMCSA determines that the waiver or modification is reasonable, based on circumstances described by the State.

(2) Requests to waive or modify the State's obligation to meet its MOE must be submitted to FMCSA in writing.

(3) FMCSA will review the request and provide a response as soon as practicable, but no later than 120 days following receipt of the request.

(e) *Permanent adjustment.* After Federal fiscal year 2021, at the request of a State, FMCSA may make a permanent adjustment to reduce the State's MOE only if a State has new information unavailable to it during Federal fiscal year 2021.

**§ 350.227 What activities are eligible for reimbursement under MCSAP?**

(a) *General.* The primary activities eligible for reimbursement under MCSAP are:

- (1) Activities that support the national program elements listed in § 350.203; and
- (2) Sanitary food transportation inspections performed under 49 U.S.C. 5701.

(b) *Additional activities.* If part of the approved CVSP and accompanied by an appropriate North American Standard Inspection and inspection report, additional activities eligible for reimbursement are:

(1) Enforcement of CMV size and weight limitations at locations, other than fixed-weight facilities, where the weight of a CMV can significantly affect the safe operation of the vehicle, such as near steep grades or mountainous terrains, or at ports where intermodal shipping containers enter and leave the United States; and

(2) Detection of, and enforcement activities taken as a result of, criminal activity involving a CMV or any occupant of the vehicle, including the trafficking of human beings.

(c) *Traffic enforcement activities.* (1) Documented activities to enforce State traffic laws and regulations designed to promote the safe operation of CMVs are eligible for reimbursement under MCSAP.

(2) Documented activities to enforce State traffic laws and regulations relating to non-CMV are eligible for reimbursement under MCSAP if:

(i) The documented activities are necessary to promote the safe operation of CMVs;

(ii) The number of motor carrier safety activities, including safety inspections, is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2004 and 2005; and

(iii) The State does not use more than 10 percent of its MCSAP funds for enforcement activities relating to non-CMV, unless the Administrator determines that a higher percentage will result in significant increases in CMV safety.

**§ 350.229 What specific costs are eligible for reimbursement under MCSAP?**

(a) *General.* FMCSA must establish criteria for activities eligible for reimbursement and make those criteria available to the States in the MCSAP application announcement before the MCSAP application period.

(b) *Costs eligible for reimbursement.* All costs relating to activities eligible for reimbursement must be necessary, reasonable, allocable, and allowable under this subpart and 2 CFR parts 200 and 1201. The eligibility of specific costs for reimbursement is addressed in the MCSAP application announcement and is subject to review and approval by FMCSA.

(c) *Ineligible costs.* MCSAP funds may not be used for the:

- (1) Acquisition of real property or buildings; or
- (2) Development, implementation, or maintenance of a State registry of medical examiners.

**§ 350.231 What are the consequences for failure to meet MCSAP conditions?**

(a) *General.* (1) If a State is not performing according to an approved CVSP or not adequately meeting the conditions set forth in § 350.207, the Administrator may issue a written notice of proposed determination of nonconformity to the chief executive of the State or the official designated in the CVSP.

(2) The notice will set forth the reasons for the proposed determination.

(b) *Response.* The State has 30 days from the date of the notice to reply. The reply must address the discrepancy cited in the notice and must provide documentation as requested.

(c) *Final Agency decision.* (1) After considering the State's reply, the Administrator makes a final decision.

(2) In the event the State fails to timely reply to a notice of proposed determination of nonconformity, the notice becomes the Administrator's final determination of nonconformity.

(d) *Consequences.* Any adverse decision will result in FMCSA:

(1) Withdrawing approval of the CVSP and withholding all MCSAP funds to the State; or

(2) Finding the State in noncompliance in lieu of withdrawing approval of the CVSP and withholding:



(i) Up to 5 percent of MCSAP funds during the fiscal year that FMCSA notifies the State of its noncompliance;

(ii) Up to 10 percent of MCSAP funds for the first full fiscal year of noncompliance;

(iii) Up to 25 percent of MCSAP funds for the second full fiscal year of noncompliance; and

(iv) Up to 50 percent of MCSAP funds for the third and any subsequent full fiscal year of noncompliance.

(e) *Judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

### **Subpart C—MCSAP-Required Compatibility Review**

#### **§ 350.301 What is the purpose of this subpart?**

The purpose of this subpart is to assist States receiving MCSAP funds to address compatibility (as defined in § 350.105 of this part), including the availability of variances or exemptions allowed under § 350.305 or § 350.307, to:

(a) Promote adoption and enforcement of compatible laws, regulations, standards, and orders on CMV safety;

(b) Provide for a continuous review of laws, regulations, standards, and orders on CMV safety;

(c) Establish deadlines for States to achieve compatibility; and

(d) Provide States with a process for requesting variances and exemptions for intrastate commerce.

#### **§ 350.303 How does a State ensure compatibility?**

(a) *General.* The Lead State Agency is responsible for reviewing and analyzing State laws, regulations, standards, and orders on CMV safety to ensure compatibility (as defined in § 350.105 of this part).

(b) *Compatibility deadline.* As soon as practicable, but no later than 3 years after the effective date of any new addition or amendment to the FMCSRs or HMRs, the State must amend its laws, regulations, standards, and orders to ensure compatibility.

(c) *State adoption of a law, regulation, standard, or order on CMV safety.* A State must submit to FMCSA a copy of any new or amended State law, regulation, standard, or order on CMV safety immediately after its enactment or issuance and with the State's next annual compatibility review.

(d) *Annual State compatibility review.* (1) A State must conduct a review of its laws, regulations, standards, and orders on CMV safety, including those of its political subdivisions, for compatibility and report in the first year of the CVSP or annual update as part of its application for funding under § 350.209 each fiscal year. In conducting this compatibility review, the State must determine which of its laws, regulations, standards, and orders on CMV safety are identical to or have the same effect as, are in addition to or more stringent than, or are less stringent than the FMCSRs or are identical to the HMRs.

(2) As applicable to interstate commerce not involving the movement of hazardous materials:

(i) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to or has the same effect as the FMCSRs, the State provision is compatible and enforceable.

(ii) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs has a safety benefit, does not unreasonably frustrate the Federal goal of uniformity, and does not cause an unreasonable burden on interstate commerce when enforced, the State provision is compatible and enforceable.

(iii) If a State law, regulation, standard, or order on CMV safety is less stringent than the FMCSRs, the State provision is not compatible and not enforceable.

(3) As applicable to intrastate commerce not involving the movement of hazardous materials:

(i) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to or has the same effect as the FMCSRs, the State provision is compatible and enforceable.

(ii) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety that is in addition to, more stringent than, or less stringent than the FMCSRs falls within a limited variance from the FMCSRs allowed under § 350.305 or § 350.307, the State provision is compatible and enforceable.

(4) As applicable to interstate and intrastate commerce involving the movement of hazardous materials, if a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to the HMRs, the State provision is compatible and enforceable.

(5) The State's laws, regulations, standards, and orders on CMV safety reviewed for the commercial driver's license compliance report are excluded from the compatibility review.

(6) Definitions of words or terms in a State's laws, regulations, standards, and orders on CMV safety must be compatible with those in the FMCSRs and HMRs.

(e) *Reporting to FMCSA.* (1) The reporting required by paragraph (d) of this section, to be submitted with the first year of the CVSP or annual update, must include:

(i) A copy of any State law, regulation, standard, or order on CMV safety that was adopted or amended since the State's last report; and

(ii) A certification that states the annual review was performed and State laws, regulations, standards, and orders on CMV safety remain compatible, and that provides the name of the individual responsible for the annual review.

(2) If State laws, regulations, standards, and orders on CMV safety are no longer compatible, the certifying official must explain the State's plan to correct the discrepancy.

(f) *FMCSA response.* Not later than 10 days after FMCSA determines that a State law, regulation, standard, or order on CMV safety is not compatible and may not be enforced, FMCSA must give written notice of the decision to the State.

(g) *Waiver of determination.* (1) A State or any person may petition the Administrator for a waiver of a decision by the Administrator that a State law, regulation, standard, or order on CMV safety is not compatible and may not be enforced.

(2) Before deciding whether to grant or deny a waiver under this paragraph, the Administrator shall give the petitioner an opportunity for a hearing on the record.

(3) If the petitioner demonstrates to the satisfaction of the Administrator that the waiver is consistent with the public interest and the safe operation of CMVs, the Administrator shall grant the waiver as expeditiously as practicable.

**§ 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?**

(a) *General.* (1) Except as otherwise provided in this section, a State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, if the gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight does not equal or exceed 11,801 kilograms (26,001 pounds).

(2) A State may not exempt a CMV from laws or regulations under paragraph (a)(1) of this section if the vehicle:

- (i) Transports hazardous materials requiring a placard; or
- (ii) Is designed or used to transport 16 or more people, including the driver.

(b) *Non-permissible exemption – Type of business operation.* (1) Subject to paragraph (b)(2) of this section and § 350.307, State laws and regulations applicable to intrastate commerce may not grant exemptions based on the type of transportation being performed (e.g., for-hire carrier, private carrier).

(2) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce, provided the scope of the original exemption has not been amended.

(c) *Non-permissible exemption – Distance.* (1) Subject to paragraph (c)(2) of this section, State laws and regulations applicable to intrastate commerce must not include exemptions based on the distance a motor carrier or driver operates from the work reporting location.

(2) Paragraph (c)(1) of this section does not apply to distance exemptions contained in the FMCSRs.

(d) *Hours of service.* State hours-of-service limitations applied to intrastate transportation may vary to the extent that they allow:

(1) A 12-hour driving limit, provided that a driver of a CMV is not permitted to drive after having been on duty more than 16 hours;

(2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days; or

(3) Extending the 100-air mile radius under § 395.1(e)(1)(i) of this subchapter to a 150-air mile radius.

(e) *Age of CMV driver.* All intrastate CMV drivers must be at least 18 years of age.

(f) *Driver physical conditions.* (1) Intrastate drivers who do not meet the physical qualification standards in § 391.41 of this subchapter may continue to be qualified to operate a CMV in intrastate commerce if:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards consistent with the Federal standards in § 391.41 of this subchapter;

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened; and

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under

the State's equivalent of § 391.41 of this subchapter if the variances are based on sound medical judgment combined with appropriate performance standards ensuring no adverse effect on safety.

(3) A State that has physical qualification standards or variances continued in effect or adopted by the State under this paragraph for drivers operating CMVs in intrastate commerce has the option not to adopt laws and regulations that establish a separate registry of medical examiners trained and qualified to apply such physical qualification standards or variances.

(g) *Additional variances.* A State may apply to the Administrator for a variance from the FMCSRs not otherwise covered by this section for intrastate commerce. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation, standard, or order on CMV safety:

- (1) Achieves substantially the same purpose as the similar Federal regulation;
- (2) Does not apply to interstate commerce; and
- (3) Is not likely to have an adverse impact on safety.

**§ 350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?**

FMCSA will only consider a State's request to exempt a specific industry from all or part of a State's laws or regulations applicable to intrastate commerce if the State submits adequate documentation containing information allowing FMCSA to evaluate:

- (a) The type and scope of the industry exemption request, including the percentage of the industry it affects, number of vehicles, mileage traveled, and number of companies it involves;
- (b) The type and scope of the requirement to which the exemption would apply;

(c) The safety performance of that specific industry (e.g., crash frequency, rates, and comparative figures);

(d) Inspection information (e.g., number of violations per inspection, and driver and vehicle out-of-service information);

(e) Other CMV safety regulations enforced by other State agencies not participating in MCSAP;

(f) The commodity the industry transports (e.g., livestock or grain);

(g) Similar exemptions granted and the circumstances under which they were granted;

(h) The justification for the exemption; and

(i) Any identifiable effects on safety.

**§ 350.309 What are the consequences if a State has provisions that are not compatible?**

(a) *General.* To remain eligible for MCSAP funding, a State may not have in effect or enforce any State law, regulation, standard, or order on CMV safety that the Administrator finds is not compatible (as defined in § 350.105 of this part).

(b) *Process.* FMCSA may initiate a proceeding to withdraw the current CVSP approval or withhold MCSAP funds in accordance with § 350.231 if:

(1) A State enacts a law, regulation, standard, or order on CMV safety that is not compatible;

(2) A State fails to adopt a new or amended FMCSR or HMR within 3 years of its effective date; or



(3) FMCSA finds, based on its own initiative or on a petition of a State or any person, that a State law, regulation, standard, order, or enforcement practice on CMV safety, in either interstate or intrastate commerce, is not compatible.

(c) *Hazardous materials*. Any decision regarding the compatibility of a State law, regulation, standard, or order on CMV safety with the HMRs that requires an interpretation will be referred to the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation before proceeding under § 350.231.

#### **Subpart D—High Priority Program**

##### **§ 350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?**

The High Priority Program is a competitive financial assistance program available to States, local governments, Federally-recognized Indian Tribes, other political jurisdictions, and other persons to carry out high priority activities and projects that augment motor carrier safety activities and projects. The High Priority Program also promotes the deployment and use of innovative technology by States for CMV information systems and networks. Under this program, the Administrator may make competitive grants to and enter into cooperative agreements with eligible entities to carry out high priority activities and projects that augment motor carrier safety activities and projects. The Administrator also may award grants to States for projects planned in accordance with the Innovative Technology Deployment Program.

##### **§ 350.403 What are the High Priority Program objectives?**

FMCSA may use the High Priority Program funds to support, enrich, or evaluate CMV safety programs and to:

(a) Target unsafe driving of CMVs and non-CMVs in areas identified as high-risk crash corridors;

(b) Improve the safe and secure movement of hazardous materials;

(c) Improve safe transportation of goods and passengers in foreign commerce;

(d) Demonstrate new technologies to improve CMV safety;

(e) Support participation in PRISM by Lead State Agencies:

(1) Before October 1, 2020, to achieve full participation in PRISM; and

(2) Beginning on October 1, 2020, or once full participation in PRISM is achieved, whichever is sooner, to conduct special initiatives or projects that exceed routine operations for participation;

(f) Support participation in PRISM by entities other than Lead State Agencies;

(g) Support safety data improvement projects conducted by:

(1) Lead State Agencies for projects that exceed MCSAP safety data requirements; or

(2) Entities other than Lead State Agencies for projects that meet or exceed MCSAP safety data requirements;

(h) Advance the technological capability and promote the Innovative Technology Deployment of intelligent transportation system applications for CMV operations by States;

(i) Increase public awareness and education on CMV safety; or

(j) Otherwise improve CMV safety.

**§ 350.405 What conditions must an applicant meet to qualify for High Priority Program funds?**

(a) *Motor carrier safety activities.* To qualify for High Priority Program funds related to motor carrier safety activities under § 350.403 paragraphs (a) through (g), (i), and (j):

(1) States must:

(i) Participate in MCSAP under subpart B of this part; and

(ii) Prepare a proposal that is responsive to the High Priority Program Notice of Funding Opportunity (NOFO).

(2) Applicants other than States must, to the extent applicable:

(i) Prepare a proposal that is responsive to the NOFO;

(ii) Except for Federally-recognized Indian Tribes, coordinate the proposal with the Lead State Agency to ensure the proposal is consistent with State and national CMV safety program priorities;

(iii) Certify that the applicant has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal;

(iv) Designate an individual who will be responsible for implementing, reporting, and administering the approved proposal and who will be the primary contact for the project;

(v) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant or cooperative agreement;

(vi) Agree to use the forms and reporting criteria required by the Lead State Agency or FMCSA to record work activities to be performed under the proposal;

(vii) Certify that a political jurisdiction will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State; and

(viii) Certify participation in national databases appropriate to the project.

(b) *Innovative Technology Deployment activities*. To qualify for High Priority Program funds for Innovative Technology Deployment activities under § 350.403(h), States must:

(1) Prepare a proposal that is responsive to the NOFO;

(2) Have a CMV information systems and networks program plan approved by the Administrator that describes the various systems and networks at the State level that need to be refined, revised, upgraded, or built to accomplish deployment of CMV information systems and networks capabilities;

(3) Certify to the Administrator that its CMV information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications—

(i) Are consistent with the national intelligent transportation systems and CMV information systems and networks architectures and available standards; and

(ii) Promote interoperability and efficiency to the extent practicable; and

(4) Agree to execute interoperability tests developed by FMCSA to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for CMV information systems and networks.

**§ 350.407 How and when does an eligible entity apply for High Priority Program funds?**

FMCSA publishes application instructions and criteria for eligible activities to be funded under this subpart in a NOFO at least 30 days before the financial assistance program application period closes. Entities must submit the application by the date prescribed in the NOFO.

**§ 350.409 What response will an applicant receive under the High Priority Program?**

(a) *Approval*. If FMCSA awards a grant or cooperative agreement, the applicant will receive a grant agreement to execute.

(b) *Denial*. If FMCSA denies the grant or cooperative agreement, the applicant will receive a notice of denial.

**§ 350.411 How long are High Priority Program funds available to a recipient?**

(a) *Motor carrier safety activities*. High Priority Program funds related to motor carrier safety activities under § 350.403 paragraphs (a) through (g), (i), and (j) obligated to a recipient are available for the rest of the fiscal year in which the funds are obligated and the next 2 full fiscal years.

(b) *Innovative Technology Deployment activities*. High Priority Program funds for Innovative Technology Deployment activities under § 350.403(h) obligated to a State are available for the rest of the fiscal year in which the funds were obligated and the next 4 full fiscal years.

**§ 350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?**

(a) *Federal share*. FMCSA will reimburse at least 85 percent of the eligible costs incurred under the High Priority Program.

(b) *Match*. In-kind contributions are acceptable in meeting the recipient's matching share under the High Priority Program if they represent eligible costs, as established by 2 CFR parts 200 and 1201 and FMCSA in the NOFO.

(c) *Waiver*. The Administrator reserves the right to reduce or waive the recipient's matching share in any fiscal year:

- (1) As announced in the NOFO; or
- (2) As determined by the Administrator on a case-by-case basis.

**§ 350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?**

Activities that fulfill the objectives in § 350.403 are eligible for reimbursement under the High Priority Program.

**§ 350.417 What specific costs are eligible for reimbursement under the High Priority Program?**

(a) *Costs eligible for reimbursement.* All costs relating to activities eligible for reimbursement must be necessary, reasonable, allocable, and allowable under this subpart and 2 CFR parts 200 and 1201. The eligibility of specific costs for reimbursement is addressed in the NOFO and is subject to review and approval by FMCSA.

(b) *Ineligible costs.* High Priority Program funds may not be used for the:

- (1) Acquisition of real property or buildings; or
- (2) Development, implementation, or maintenance of a State registry of medical examiners.

**PART 355—[Removed and Reserved]**

2. Under the authority of 49 U.S.C. 504 and 31101 et seq., remove and reserve part 355, consisting of §§ 355.1 through 355.25 and Appendix A to part 355.

**PART 388—[Removed and Reserved]**

3. Under the authority of 49 U.S.C. 113 and 502, remove and reserve part 388, consisting of §§ 388.1 through 388.8.

Issued under authority delegated in 49 CFR 1.87.

Dated:

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James A. Mullen  
Acting Administrator