



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

1200 New Jersey Ave, SE
Washington, DC 20590

Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

NOTICE OF PROPOSED DETERMINATION OF NONCONFORMITY

Dear Governor Newsom,

The Federal Motor Carrier Safety Administration (FMCSA) hereby serves this Notice of Proposed Determination of Nonconformity pursuant to 49 U.S.C. § 31102 and 49 CFR § 350.231. This Notice proposes a finding of noncompliance with the Motor Carrier Safety Assistance Program (MCSAP) qualifying conditions and serves as formal notice of potential sanctions, as detailed below.

A. Brief Summary

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 [commercial motor vehicles] and to promote the safe transportation of passengers and hazardous materials." 49 CFR § 350.201(a). To remain eligible for MCSAP funding, a state must adopt and enforce laws, regulations, standards, and orders on commercial motor vehicle (CMV) safety that are compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) in 49 CFR Parts 390,391,392,393,395,396, and 397. *See* 49 CFR § 350.207(a)(2).

This Notice is issued under 49 CFR §§ 350.231(a)(1)-(2) because FMCSA has determined that California is not performing in accordance with its approved Commercial Vehicle Safety Plan (CVSP) and is not adequately meeting the qualifying conditions for MCSAP participation.

Per regulation, the State has 30 days from the date of this notice to respond to FMCSA before the FMCSA Administrator may issue a final agency decision. *See* 49 CFR § 350.231(b). Any adverse final decision will result in the withholding of MCSAP funds as described in Section C below.

B. Basis for Proposed Determination of Nonconformity

The FMCSRs require commercial drivers to "read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." 49 CFR § 391.11(b)(2). A driver who fails to meet this standard is not qualified to operate a CMV in interstate commerce and should be placed out-of-service during roadside inspections.

49 CFR § 350.303(a)-(c) requires MCSAP-participating states to adopt and enforce compatible laws on CMV safety, including the English language proficiency (ELP) standard. "Compatible"

laws are defined in 49 CFR § 350.105 as State laws, regulations standards and orders on CMV safety that "are identical to or have the same effect as the FMCSRs." FMCSA has determined that California has neither adopted a compatible law, regulation, standard, nor order to implement this Federal ELP requirement. Therefore, California has failed to comply with the MCSAP compatibility requirements that the state must and has certified in their required annual MCSAPCVSP.

Under 49 CFR § 350.207(a)(2), States must enforce the ELP requirement in 49 CFR § 391.11(b)(2) to remain eligible for MCSAP funding. Enforcement of this requirement includes administering ELP tests and placing drivers who fail ELP tests out of service. It also includes putting drivers who are already under an out of service order from a previous inspection out of service. FMCSA data show that California is not enforcing the ELP standard during roadside inspections and is failing to place out of service drivers who are not in compliance.

From June 25, 2025, through August 21, 2025, FMCSA identified that out of 69,268 inspections conducted by California State inspectors, 34,069 resulted in at least one violation being issued. Of those 34,069 inspections, only one contained a violation relating to ELP (391.11B2-S, 391.11B2-Q, 391.11B2-Z), with that one violation resulting in the driver being placed out of service as a result of the ELP violation.

In addition, at least 23 drivers who were placed out of service on or after June 25, 2025, due to an ELP violation, were subsequently inspected by a California State inspector who failed to cite the ELP violation and give full faith and credit to the previous inspection.

C. Sanctions for Determination of Nonconformity

Pursuant to 49 CFR § 350.231(d), if FMCSA makes a final determination of nonconformity, the Agency may withhold up to 100% of the State's MCSAP funding.

Note: In FY 2025, California received approximately \$33 million in MCSAP funds.

D. How to Respond to This Notice

California has 30 days from the date of this Notice to respond, as specified in 49 CFR § 350.231(b). The response should be sent to me at the above address or by email to jesse.elison@dot.gov. Once FMCSA receives the State's reply, the Agency will review the response and the FMCSA Administrator will issue a final agency decision.

Failure to respond within 30 days of the date of this Notice will result in this Notice becoming the Administrator's final determination of nonconformity.

Please direct all questions regarding this Notice to Philip Thomas, Deputy Associate Administrator for Safety at philip.thomas@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Elison". The signature is fluid and cursive, with the first name "Jesse" and last name "Elison" clearly distinguishable.

Jesse Elison
Chief Counsel
Federal Motor Carrier Safety Administration