



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

1200 New Jersey Ave, SE  
Washington, DC 20590

Governor Bob Ferguson  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

## **NOTICE OF PROPOSED DETERMINATION OF NONCONFORMITY**

Dear Governor Ferguson,

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 Washington 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 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 Washington incorporates by reference Title 49 of the Code of Federal Regulations, including the ELP requirements, through the WASH. ADMIN. CODE § 480-15-999(2). However, FMCSA data show that Washington is not enforcing the ELP standard during roadside inspections and is failing to give full faith and credit to previous inspections.

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. The FMCSA data below show that Washington 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 9,451 inspections conducted by Washington State inspectors, 6,291 resulted in at least one violation being issued. Of those 6,291 inspections, six contained a violation relating to ELP (391.11B2-S, 391.11B2-Q, 391.11B2-Z), with four violations resulting in the driver being placed out of service as a result of the ELP violation and two occurring in commercial zones (391.11B2-Z). Washington failed to put out of service the two operators in the commercial zone, contrary to legal requirements and the FMCSA ELP guidance. (Under FMCSA's ELP Guidance Memo, only violations of 391.11B2-Z that occur in the border commercial zones along the U.S.-Mexico border are exempt from being placed out of service).

Additionally, at least 4 drivers who were placed out of service on or after June 25, 2025, due to an ELP violation, were subsequently inspected by a Washington 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, Washington received approximately \$10.5 million in MCSAP funds.*

### **D. How to Respond to This Notice**

Washington 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](mailto:jesse.elison@dot.gov). After reviewing the State's reply, the FMCSA Administrator will issue a final agency decision.

Failure to respond within 30 days 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](mailto: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