

**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:** Notice of proposed rulemaking.

**SUMMARY:** FMCSA proposes amendments to the Agency's financial assistance programs resulting from the Fixing America's Surface Transportation (FAST) Act, including amendments based on the funding formula recommendations derived from the Motor Carrier Safety Assistance Program (MCSAP) Formula Working Group (working group). This proposal would reorganize the Agency's regulations to create a standalone subpart for the High Priority Program. It would also include 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:** Comments on this notice must be received on or before October 7, 2019.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2017–0370 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jack Kostelnik, State Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey

Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–5721 or by email at [jack.kostelnik@dot.gov](mailto:jack.kostelnik@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** This notice of proposed rulemaking (NPRM) is organized as follows:

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- P. National Technology Transfer and Advancement Act (Technical Standards)
- Q. National Environmental Policy Act of 1969

**I. Public Participation and Request for Comments***A. Submitting Comments*

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2017–0370), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA–2017–0370, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

**Confidential Business Information**

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act (5 U.S.C. 552), CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as "confidential" or "CBI." Submissions designated as CBI and meeting the definition noted above

will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that FMCSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA–2017–0370, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

#### C. 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 [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL 14–FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

#### D. Waiver of Advance Notice of Proposed Rulemaking

Under section 5202 of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1534–5 (2015), if a regulatory proposal is likely to lead to the promulgation of a major rule,<sup>1</sup> FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest (49 U.S.C. 31136(g)). The Agency does not anticipate that this rulemaking would

<sup>1</sup> A “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget (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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

result in a major rule. Thus, publication of an ANPRM is not necessary. However, a key component of this rulemaking involves a new allocation formula governing the distribution of MCSAP funds. This NPRM reflects the allocations derived from the recommendations of the working group that was appointed by the Secretary of Transportation (Secretary) in accordance with section 5106 of the FAST Act.

While this working group was not a negotiated rulemaking committee, which is an alternative to an ANPRM under the statute, its recommendations were developed through a collaborative effort by relevant stakeholders.

## II. Executive Summary

### A. Purpose and Summary 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. Certain regulations are no longer necessary or are redundant. Moreover, the FAST Act required FMCSA to implement a multi-year CVSP with annual updates for States applying for MCSAP funds and to provide a new MCSAP allocation formula. This proposal would provide a new MCSAP allocation formula, require States to adopt 3-year CVSPs, and reorganize the Agency’s regulations to create a standalone subpart for the High Priority Program. FMCSA’s primary legal authority for this rulemaking is derived from Title V, Subtitle A of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1514–1534 (2015).

### B. Summary of Major Provisions

The rule proposes a new MCSAP allocation formula. The FAST Act required the Secretary to assemble a working group to recommend a new MCSAP allocation formula. The Agency fully considered and is proposing to fully adopt the recommendations of the working group.

The new MCSAP allocation formula would include three components: State, Border, and Territory. Each component would be assigned a percentage of MCSAP funds. Funds would be allocated under the State Component using five equally-weighted factors and then applying minimum and maximum caps to the allocated funding. The Border Component would allocate 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 would ensure that each Territory, except for Puerto Rico (which is allocated funding under the State Component), receives a minimum funding amount of \$350,000. Any funds not allocated under the Border or Territory Components would be added to the State Component for allocation. The proposed formula would promote stability in funding and protect States from experiencing significant and unpredicted changes by including a hold-harmless provision and a funding cap.

This proposed rule would require States to use CVSPs in accordance with the FAST Act. The rule would provide direction to States on how and when to submit CVSPs, which would be on 3-year cycles. In the first year of the CVSP, States would 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. In the second and third years of the CVSP, States would 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 proposes to clarify 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, to transport certain hazardous materials.

The rule also proposes to revise and reorganize part 350. Currently, the High Priority Program and MCSAP regulations are intertwined in part 350, but some regulations do not apply to both programs. To provide clarity for the eligible recipients, this NPRM separates the two programs into different subparts in part 350. In addition, relevant sections of part 355 would be added to part 350. These proposed changes address regulatory compatibility and would reduce redundancy and make part 350 more clear and concise.

Finally, FMCSA proposes to remove part 388, titled “Cooperative Agreements with States,” because FMCSA does not rely on part 388 provisions.

### C. Costs and Benefits

This rule proposes a new MCSAP allocation formula to replace the current

formula that has been in use for more than a decade with little modification. The proposed MCSAP allocation formula would make several improvements over the current formula. The proposed formula would result in a reallocation of fiscal year (FY) 2020 grant funding that would be considered a transfer payment, in that it would not change the total amount of funds distributed. In accordance with OMB guidance on conducting regulatory analysis (as discussed in OMB Circular A-4, "Regulatory Analysis"), transfer payments within the U.S. are not included in the estimates of the costs and benefits of rulemakings. Thus, FMCSA does not include transfers resulting from the proposed changes to the MCSAP allocation formula in its estimate of the rule's costs or benefits.

The proposed rule would require States to use CVSPs in accordance with the FAST Act. The rule would provide direction to States on how and when to submit CVSPs, which would be on 3-year cycles. Under the current regulations, States must submit lengthy CVSP applications annually to receive MCSAP funding, unless they volunteer to submit 3-year CVSPs. The proposed rule would require States to submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years. 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 States<sup>2</sup> have transitioned voluntarily to 3-year CVSPs, and thus, there is no impact from this proposed change.

If a continuing resolution in FY 2020 were to occur, FMCSA would utilize the same process it has employed during recent budget cycles. State lead agencies would complete the CVSP utilizing an estimated annual award total based on the statutorily authorized funding level. Should the final appropriation be less than the authorized amount, FMCSA would publish a revised funding table and provide MCSAP recipients the opportunity to modify their proposed activities and budget accordingly.

FMCSA will also engage in continuous outreach with its MCSAP recipients regarding the implementation of the proposed formula and related impacts. The Agency anticipates including this as a key topic of

discussion during its annual meeting of MCSAP grantees, providing ongoing updates through its quarterly webinars with grant recipients, and developing printed materials relating to the new formula implementation.

FMCSA, through its Division Offices, will work directly with individual MCSAP partners to ensure that stakeholders are informed and that questions are addressed quickly. In addition, FMCSA has already developed and distributed via its website a series of frequently asked questions (FAQs) and an executive summary of the working group's report to facilitate this process.

Due to the nature of grants as transfer payments (which are not considered costs or benefits), FMCSA anticipates that the proposed changes would not result in any societal costs or benefits.

### III. Abbreviations and Acronyms

ANPRM	Advance notice of proposed rulemaking
BEG	Border Enforcement Grant
CBI	Confidential Business Information
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CMV	Commercial motor vehicle
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
FTE	Full-time employees
FY	Fiscal year
HMRs	Federal Hazardous Materials Regulations
MCSAP	Motor Carrier Safety Assistance Program
MOE	Maintenance of effort
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
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996 working group MCSAP Formula Working Group
U.S.C.	United States Code
VMT	Vehicle miles traveled

### IV. Legal Basis for the Rulemaking

This rule is based primarily on Title V, Subtitle A of the FAST Act, Public Law 114-94, 129 Stat. 1312, 1514-1534 (2015), which consolidated several of FMCSA's financial assistance programs and authorized program funding levels through fiscal year (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 Program, and Border Enforcement grant programs into the revised 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, the Secretary is required to issue an NPRM. The working group submitted its report on April 7, 2017, and an addendum to the report on January 8, 2019. 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.

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)). Exercising this authority, this NPRM proposes to clarify that States are required to cooperate in ensuring carriers transporting certain hazardous

<sup>2</sup>Unless otherwise provided in this preamble, we use the term "State" as including the District of Columbia and the Territories. FMCSA estimated that there are 55 respondents consisting of the 50 States minus Oregon, plus the District of Columbia and the 5 Territories.

materials possess the required FMCSA hazardous materials safety permit (49 U.S.C. 31102(c)(1)).

FMCSA is authorized to implement these statutory provisions by delegation from the Secretary in 49 CFR 1.87.

## V. Background

### A. History of MCSAP

The Surface Transportation Assistance Act of 1982, Public Law 97–424, 96 Stat. 2097, 2155 (1983), authorized MCSAP. MCSAP is a Federal financial assistance program that provides formula grants to States (unless otherwise stated, defined in this proposed rule to include the Territories and the District of Columbia) to reduce the number and severity of injuries and the number of fatalities resulting from crashes involving CMVs and to promote the safe transportation of passengers and hazardous materials. MCSAP funds are essential to maintaining FMCSA's national CMV safety enforcement programs, and those of States. MCSAP establishes the conditions to participate in the program and promotes the adoption and uniform enforcement of State safety rules, regulations, and standards that are compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Materials Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.<sup>3</sup>

Before FY 2017, MCSAP consisted of the Basic Program funds and Incentive funds calculated using a formula, and set-asides for the discretionary High Priority and New Entrant grant programs. Until a new MCSAP allocation formula is implemented, the Basic Program funds and Incentive funds ensure that FMCSA and States continue to work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system.

The Basic Program funds currently distribute MCSAP funds proportionally

to States using the following four, equally-weighted factors:

(1) 1997 road miles (all highways) as defined by the Federal Highway Administration (FHWA);

(2) Vehicle miles traveled (VMT) as defined by the FHWA;

(3) Population based on annual census estimates issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FHWA.

The Incentive funds are a portion of MCSAP funds distributed to States, but not to the Territories. A State's share of the Incentive funds is based on:

(1) Reduction of large truck-involved fatal crashes;

(2) Reduction of large truck-involved fatal crash rate or maintenance of a large truck-involved fatal crash rate that is among the lowest 10 percent among MCSAP recipients;

(3) Uploads of CMV crash reports in accordance with current FMCSA policy;

(4) Verification of commercial driver's licenses during inspections; and

(5) Uploads of CMV inspection data in accordance with FMCSA policy.

The High Priority Program was a set-aside of MCSAP funds with an authorization level of up to \$15 million prior to FY 2017. Eligible recipients included State agencies, local governments, and organizations representing government agencies that used and trained qualified officers and employees in coordination with State motor vehicle safety agencies. FMCSA provided High Priority Program funds to enable recipients to carry out enforcement activities and projects that improved CMV safety and compliance with CMV regulations. Funding was also available for projects that were national in scope, increased public awareness and education, demonstrated new technologies, and reduced the number and rate of CMV crashes. The grant period of performance was the fiscal year of obligation and the next fiscal year.

The New Entrant grant program was also a set-aside of MCSAP funds with an authorization level of up to \$32 million prior to FY 2017. Eligible recipients included State agencies and local governments. The grant program funded safety audits on new entrant motor carriers to ensure that they had effective safety management programs. The grant period of performance was the fiscal year of obligation and the next fiscal year.

The Border Enforcement Grant (BEG) program was a standalone grant program with an authorization level of up to \$32 million prior to FY 2017. FMCSA

provided BEG program funds to eligible recipients, which included State governments or entities that share a land border with Canada or Mexico and any local government or entity in that State, for carrying out border CMV safety programs and related enforcement activities and projects. The grant period of performance was the fiscal year of obligation and the next fiscal year.

The PRISM program was a standalone grant program with an authorization level of up to \$5 million prior to FY 2017. Eligible recipients included State agencies, the District of Columbia, Puerto Rico, and the Territories. FMCSA provided PRISM funds to enable recipients to link State CMV registration and licensing systems with Federal motor carrier safety information systems. The grant period of performance was from the date of execution through the award end date, as provided in the grant agreement.

The Safety Data Improvement Program was a standalone grant program with an authorization level of up to \$3 million prior to FY 2017. Eligible recipients included State governments such as departments of public safety, departments of transportation, or State law enforcement agencies in any State, the District of Columbia, Puerto Rico, and the Territories, or any agency or instrumentality of a State exclusive of local governments. FMCSA provided Safety Data Improvement Program funds to eligible recipients that collected, analyzed, and reported large truck and bus crash and inspection data to improve the quality of the CMV data reported by States to FMCSA. The grant period of performance was from the date of execution through the award end date, as provided in the grant agreement.

The Commercial Vehicle Information Systems and Networks (CVISN) was a standalone grant program with an authorization level of up to \$25 million prior to FY 2017. Eligible recipients included agencies of States, the District of Columbia, Puerto Rico, and the Territories. FMCSA provided funding to advance technological capability and promote the deployment of intelligent transportation systems applications for commercial vehicle operations, including CMV, commercial driver, and carrier-specific information systems and networks. The grant period of performance was from the date of execution through the award end date, as provided in the grant agreement.

### B. FAST Act

The FAST Act restructured FMCSA's financial assistance programs. It created a standalone High Priority Program that

<sup>3</sup> The program was subsequently modified by the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 4002, 105 Stat. 1914, 2140 (1991); the ICC Termination Act of 1995, Public Law 104–88, 104(a), 109 Stat. 803, 918 (1995); the Transportation Equity Act for the 21st Century, Public Law 105–178, 4003(b), (c), 112 Stat. 107, 395 (1998); the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 207, 113 Stat. 1748, 1764 (1999); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 4106, 4307(b), 119 Stat. 1144, 1717, 1774 (2005); and the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405 (2012). The most recent modifications to MCSAP were enacted as part of Title V, Subtitle A of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1514–1534 (2015).

is a competitive financial assistance program. It has two major purposes: (1) Supporting, enriching, and augmenting activities related to motor carrier safety; and (2) promoting Innovative Technology Deployment. The Innovative Technology Deployment program modifies and replaces FMCSA's Commercial Vehicle Information Systems and Networks program. The Safety Data Improvement Program and PRISM, which were previously standalone grant programs, were merged into both the High Priority Program and MCSAP. The New Entrant grant program and standalone BEG were also merged into MCSAP.

Section 5106(d) of the FAST Act prescribed the MCSAP interim funding formula for FY 2017 and later fiscal years, as necessary. The interim formula uses the MCSAP funding formula used in FY 2016 plus the average funding awarded to a State in FYs 2013, 2014, and 2015 for BEG and New Entrant program grant funds. Subject to the availability of funding and notwithstanding fluctuations in the data elements, the initial amounts in FY 2017 were adjusted to ensure that, for each State, the amount provided while using the interim formula was not less than 97 percent of the average amount of funding received in FYs 2013, 2014, and 2015, or other equitable amounts.

In FY 2018, FMCSA awarded \$294,416,500 for MCSAP formula grants using the interim formula, and \$42,424,178 for the High Priority Program through a competitive financial assistance process. Additional information on the Agency's financial assistance programs may be found at <https://www.fmcsa.dot.gov/mission/grants>.

The FAST Act added 49 U.S.C. 31102(f), which created additional allowances for States when determining their average levels of expenditure for purposes of the MCSAP-required maintenance of effort.<sup>4</sup> States may exclude expenditures for activities related to border enforcement and new entrant safety audits. In addition, section 5107 of the FAST Act permits States to request a one-time adjustment to their maintenance of effort baselines in the first year a new MCSAP allocation formula is implemented. The adjusted baseline will become the State's baseline maintenance of effort that is required each fiscal year as part

<sup>4</sup> Each fiscal year, a State must maintain the average aggregate expenditure (maintenance of effort) of the Lead State Agency, exclusive of Federal funds and State matching funds, for CMV safety programs eligible for MCSAP funding at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005.

of the CVSP or annual update. This adjustment eases the burden on FMCSA's State partners by accounting for the potentially increased match requirements under MCSAP grant consolidation. States must request this adjustment before September 30 of the fiscal year in which the new formula is implemented. Furthermore, if a State subsequently identifies new information, the State may request a modification to its maintenance of effort baseline (49 U.S.C. 31102(f)(2)).

#### C. FAST Act Omnibus Rule

On October 14, 2016, FMCSA published a final rule titled "Amendments To Implement Grants Provisions of the Fixing America's Surface Transportation Act" (81 FR 71002). That rule made nondiscretionary, ministerial changes to FMCSA regulations, consistent with the FAST Act. For example, it consolidated the BEG, New Entrant grant, and parts of the Safety Data Improvement Program, PRISM, and Innovative Technology Deployment grants into the MCSAP formula grant. This grant consolidation reduced the administrative burden on eligible recipients, provided more flexibility to eligible recipients, and streamlined the grant application process. In addition, the rule required that each State establish and maintain a new entrant safety audit program as a condition of MCSAP funding. To continue to receive MCSAP funding for border enforcement, eligible States were required to maintain a border enforcement program. Furthermore, FMCSA amended its regulations to remove the requirement for an annual CVSP. This change allowed States to use a 3-year CVSP, but did not require it (discussed in full below). Finally, the rule provided that lead State agencies (*i.e.*, those State agencies responsible for MCSAP administration) are not eligible to apply for High Priority Program funds for Safety Data Improvement Program and PRISM capabilities, unless such projects exceed the minimum requirements.

#### D. MCSAP Formula Working Group

The FAST Act required the Secretary to establish a working group to analyze requirements and factors to recommend a new MCSAP allocation formula to the Secretary. The FAST Act mandated that the group be composed of representatives from State CMV safety agencies, an organization representing State CMV enforcement agencies, FMCSA, and any other persons that the Secretary considered necessary for the development of a new MCSAP allocation formula. Congress mandated

that State safety agency participation make up at least 51 percent of the working group and exempted the group from the Federal Advisory Committee Act.

FMCSA requested applications for working group members through a notice posted on the Agency's website and through direct solicitation of MCSAP lead State agencies. An FMCSA panel reviewed applications and recommended applicants who would create a diverse working group, taking into consideration a State's location and size.

The working group was established in March 2016. It held six in-person meetings and several web conferences to discuss various factors and issues relevant to the creation of a new MCSAP allocation formula. The working group created a web page<sup>5</sup> that contains meeting summaries for both in-person and web-based discussions.

To develop its recommendation, the working group used the following guiding principles and agreed the new formula should:

- Be safety-based (primary objective);
- Improve the previous formula;
- Address FAST Act grant changes;
- Meet FAST Act formula requirements;
- Promote stability in funding;
- Respond to changes in States' exposure to crashes; and
- Use quality data sources.

In applying these principles, the working group studied the current allocation formula's design and data elements and used it as a baseline. To improve motor carrier safety, the primary consideration was to develop a new MCSAP allocation formula that provides States with an appropriate level of funding based on exposure to crashes. The working group chose to base the formula on factors correlated with crashes, rather than the number of crashes itself, because using CMV crashes as a factor in the allocation formula has undesired impacts, such as punishing States for having an effective CMV safety program.

The working group applied a variety of analytical methods to:

- Identify areas in the current formula to improve;
- Create alternative formula designs; and
- Evaluate impacts of the proposed formulas with respect to the guiding principles.

The analytical methods used by the working group are described in the working group's report and the

<sup>5</sup> See [www.fmcsa.dot.gov/mission/grants/fast-act-mcsap-formula-working-group](https://www.fmcsa.dot.gov/mission/grants/fast-act-mcsap-formula-working-group).

appendices. These methods include, but are not limited to:

- Analyzing the correlation between each proposed factor and the next year's CMV crashes using linear regression. (Note that this was tested over the course of 5 years for each factor to ensure consistency in the results.)
- Generating and evaluating histograms of changes in proposed formula factors over time to quantify the stability of each potential formula factor.
- Experimenting with different formula structures (e.g., assigning different weights to each factor).
- Generating simulated formula allocation results with each iteration of the proposed formula to understand and evaluate the impacts of each proposed change.

The working group submitted a report titled "Recommendations to the U.S. Department of Transportation for the Development of the New MCSAP Grant Allocation Formula" to FMCSA, which was received on April 7, 2017. FMCSA reviewed the report and agreed with the majority of the working group's recommendations. To facilitate additional input from the working group and transparency in the development of a new MCSAP allocation formula, the FMCSA Administrator requested that the working group reconvene for further deliberation on three of its recommendations. The working group submitted an addendum to its report on January 8, 2019. A full discussion of this process can be found below. Copies of the report and addendum are included in the docket.

#### E. Voluntary Implementation of CVSPs

Section 5101 of the FAST Act requires the Secretary to prescribe procedures for a State to submit a multi-year CVSP with annual updates for MCSAP grants. In a **Federal Register** notice published on October 27, 2016, FMCSA asked 14 questions to assist the Agency in developing an information technology system format and procedures for submission of such a CVSP (81 FR 74862). FMCSA considered comments in response to the **Federal Register** notice,<sup>6</sup> the status of the working group's recommendation, and necessary electronic CVSP (eCVSP) tool modifications. As a result, the Agency created a CVSP with a 3-year plan cycle.

The Agency elected to test both the 3-year CVSP and revised eCVSP tool. The Agency sought volunteers and selected 18 States and 1 Territory to complete a 3-year CVSP for FY 2018. The selection of volunteers was based on geography,

program size, and programmatic structure variety to allow the Agency to fully test the functionality of the CVSP. The 3-year plan cycle for this first group of States included FYs 2018, 2019, and 2020.

Using the experience and feedback of the 3-year CVSP users, FMCSA made modifications to the CVSP and eCVSP tool prior to the FY 2019 MCSAP application. FMCSA worked with the second group of 13 volunteer States to submit their CVSPs by August 1, 2018. The 3-year plan cycle for this second group of States is FYs 2019, 2020, and 2021. States that did not move to 3-year CVSPs for FY 2018 or FY 2019 were required to submit an annual CVSP by August 1, 2018.

FMCSA notes that the remaining States voluntarily submitted a 3-year CVSP by August 1, 2019. This third group of States completed their CVSPs for FYs 2020, 2021, and 2022.

FMCSA expects that States will remain on one of these 3-year planning cycles. For example, States that began submitting 3-year CVSPs in FY 2017 for FY 2018–20 grants will submit a 3-year CVSP again in 2020 for the FY 2021–23 grants.

## VI. Discussion of the Proposed Rulemaking

### A. Separation of MCSAP and the High Priority Program Provisions

This NPRM proposes to separate the regulations governing MCSAP and the standalone High Priority Program created by the FAST Act. Currently, the regulatory provisions for MCSAP and the High Priority Program are intermingled. This NPRM proposes to organize the programs into distinct regulatory subparts under 49 CFR part 350 to reflect the relevant information for each program. This separation would make it easier to find needed regulatory information. For MCSAP, the regulations have been reorganized and modified to comply with FAST Act requirements, provide clarity, and remove redundancies. For the High Priority Program, the regulations have been modified to clarify eligibility conditions.

The Agency proposes to implement the changes to FMCSA's financial assistance programs required by the FAST Act beginning October 1, 2019, for FY 2020. However, consistent with section 5101(a) of the FAST Act and a prior rulemaking implementing select provisions of the FAST Act (81 FR 71002, October 14, 2016), mandatory participation in PRISM remains October 1, 2020 (49 U.S.C. 31102(c)(2)(Z)).

### B. Proposed MCSAP Allocation Formula Working Group Recommendation

The working group recommended that the formula consist of three separately calculated components: A Territory Component, Basic Component, and Border Component. As further explained below, the working group also recommended terminating the MCSAP Incentive Program.

The new MCSAP allocation formula recommended by the working group makes several improvements to the current formula. The FAST Act outlined several factors for the working group to consider.<sup>7</sup> The working group analyzed objective safety data and other information prior to making its MCSAP allocation formula recommendation.

Various methods of research and analysis were used to understand each area of improvement, create alternative formula designs, and evaluate their impacts with respect to the guiding principles. These efforts included:

- Identifying and obtaining data sources.
- Evaluating data sources to determine if they met the criteria for formula inclusion, e.g., through statistical analysis.
- Reviewing and considering programmatic needs and trends.
- Understanding the varying administrative needs of grant recipients.
- Understanding the investments that recipients made with grant funding (e.g., personnel and benefits, contract services, equipment, etc.).
- Reviewing published reports by the Office of the Inspector General (OIG), the National Research Council (NRC), and a previous MCSAP formula evaluation by Oak Ridge National Laboratory.
- Conducting simulations to evaluate funding impacts.

The working group's recommended MCSAP allocation formula includes only those factors that are most highly correlated with a State's total CMV crashes, have data that are reliably obtainable, and meet the objectives mandated by the FAST Act.

With respect to the Territory Component, the data used to calculate

<sup>7</sup> These factors must reflect, at a minimum "(1) the relative needs of the States to comply with section 31102 of title 49, United States Code; (2) the relative administrative capacities of and challenges faced by States in complying with that section; (3) the average of each State's new entrant motor carrier inventory for the 3-year period prior to the date of enactment of this Act; (4) the number of international border inspection facilities and border crossings by commercial vehicles in each State; and (5) any other factors the Secretary considers appropriate." See § 5106(c) of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1531 (2015).

<sup>6</sup> 83 FR 691 (January 5, 2018).

the Basic Component (discussed below) is not available for the Territories, defined as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands. Thus, the working group originally recommended that the Territories have a separate component that allocates a maximum of 0.65 percent of available MCSAP funds among these Territories. The allocation would be based on FMCSA's assessment of each Territory's proposed CMV projects and costs included in its CVSP. The working group recommended a funding floor to ensure that Territories would receive a minimum amount to maintain an effective program, and it tasked FMCSA with establishing this floor.

The Basic Component allocates funding to States, which includes the District of Columbia and Puerto Rico, based on factors that are highly correlated with the State's total CMV crashes. This allocation, as originally proposed by the working group, would represent at least 89.85 percent of available MCSAP funds, plus any unallocated Border and Territory Component amounts. The Basic Component allocation calculates a proportion for each State based on the following five equally-weighted factors, using the most recent data available:

(1) *National Highway System Road Length*—total National Highway System roadway miles contained within the jurisdictional boundaries of the State as measured by the FHWA;

(2) *Total VMT*—total VMT for all vehicles within the State as measured by the FHWA;

(3) *Total Population*—U.S. Census Bureau population estimates;

(4) *Special Fuel Consumption*—total consumption of special fuels within the State as measured by the FHWA; and

(5) *Motor Carrier Registrations*—the number of interstate carriers and intrastate hazardous materials carriers as measured by FMCSA to address a FAST Act requirement on new entrant carriers.

To equally weight the factors, each State's percentage of the national total for each factor would be determined. Then, the five percentages for each State are combined to result in the State's percentage.

While the new Basic Component includes all the factors included in the current formula, the working group proposed an update to an existing factor and one addition. For example, the existing formula factor of 1997 road miles is removed, and it is replaced with the more current National Highway System highway miles, which would be updated as new data becomes available

(versus the static factor of 1997). Not only does the National Highway System miles formula factor provide a more recent measurement of roadway exposure, it is also more highly correlated with CMV crashes. The working group recommended adding carrier registrations to the Basic Component as a new factor because of its stability over time, correlation with crashes, and ability to account for new entrant safety audit workload (a FAST Act mandated MCSAP requirement).

The working group recommended adjustments to the proportions calculated under the Basic Component to ensure that each State receives at least 0.44 percent, but no more than 4.944 percent, of the MCSAP funds available for the Basic Component. After adjustment, each State's percentage would be multiplied by the total MCSAP funds available for the Basic Component to determine the dollar value of the State's allocation under the Basic Component.

In addition, the working group recommended eliminating the existing MCSAP Incentive funds in favor of a risk-based<sup>8</sup> and consistent formula in alignment with the goals of the working group and the FAST Act. The working group stated that funding can have a greater safety impact by allocating it to recipients who need it to address safety issues, rather than when it is used as an incentive for certain program areas. Furthermore, according to the working group, the existing program-oriented incentive factors are no longer relevant. In the past, they have helped improve compliance in certain program areas (especially data quality), but those areas are no longer the focus for improvement (almost all States have good data quality now). Finally, the working group noted that the FAST Act expanded MCSAP participation requirements so that program aspects that previously required incentivizing are now basic participation requirements. Thus, State performance in reaching safety objectives can be assessed through effective performance management techniques employed by FMCSA. To this end, FMCSA continues to modernize its existing Analysis and Information resources used to monitor MCSAP, and has instituted a performance, standards and benchmarks initiative with States to develop additional performance metrics, trend analysis, and reporting tools.

<sup>8</sup>The working group intended the term "crash risk" to refer to a State's total number of crashes expected to occur during a year, and not a crash rate. See Part II, Section 3D, and Part III, Section 2A of the report.

The Border Component aims to maintain safety gains attained through border CMV enforcement programs and to support continued performance of CMV safety inspections, traffic enforcement, and other activities pertaining to vehicles engaged in international commerce or occurring near our borders with Canada and Mexico. To provide adequate resources, the working group originally recommended that the Border Component should allocate a maximum of 9.5 percent of available MCSAP funds to border States.

Because funding for border activities is mostly used to pay for personnel conducting border activities, the funding would be allocated based on relative need for personnel in the southern and northern border States. The need for personnel would be estimated based on the volume of annual CMV crossings at each port of entry and represented as full-time employees (FTE).

The personnel needed at each port of entry would be calculated as follows:

(1) Allocate the minimum required FTE to each port of entry:

(a) 8 FTE per each Mexican port of entry.

(b) 0.25 FTE per each Canadian port of entry with more than 1,000 annual CMV crossings.

(2) Allocate FTEs according to annual CMV crossings (if not already covered by the minimum):

(a) 25,000 crossings per FTE for Mexican ports of entry.

(b) 200,000 crossings per FTE for Canadian ports of entry.

The FTEs at all ports in a border State would be totaled and divided by the national total of FTEs, as demonstrated by a percentage. There would be a minimum (0.075 percent) and maximum (50 percent) funding limit established to ensure equitable distribution of grant dollars among States sharing a land border with Canada or Mexico. Each border State's percentage would be multiplied by the total border allocation amount available to determine the dollar amount.

The new MCSAP allocation formula would include hold-harmless and cap provisions to ensure stable funding over fiscal years, which would apply to a State's total share of MCSAP funds allocated under the Basic and Border Components. The hold-harmless provision would be based on shares rather than dollar amounts. A State would receive no less than 97 percent and no more than 105 percent of its prior year's share of MCSAP funding. Neither the hold-harmless nor the cap would apply to Territories.

FMCSA agreed with the majority of the working group's recommendations, but requested that the working group reconvene for further deliberation on three of its recommendations. They related to the percentages of MCSAP funds allocated to the Territory and Border Components, and the maximum amount of the Border Component that a State could receive.

FMCSA questioned the percentage of total MCSAP funds allocated to the Territory Component. FMCSA determined that the current level of \$350,000 per Territory (which equated to approximately 0.49 percent) adequately addresses the CMV safety needs in most of the Territories. Therefore, allocating 0.65 percent of the total MCSAP funds would exceed the amount necessary for most Territories to conduct their CMV safety programs.

FMCSA also suggested increasing the percentage of total MCSAP funds allocated to the Border Component from a maximum of 9.5 percent to 11 or 12 percent. This suggestion was made due to increased border activity in recent years and several recent policy changes, including the renegotiation of trade agreements, that may impact border activity. In addition, an allocation of 11 percent would maintain current Federal funding levels and an allocation of 11 or 12 percent would still align with CMV crashes.

Finally, FMCSA suggested removing the 50 percent maximum limit on the amount of the Border Component a State could receive. This suggestion was made because the 50 percent limit would not meet the growing needs of the State with the most border activity.

The working group reconvened and met four times via interactive web conferences to consider FMCSA's concerns. A process that was similar to the one used to develop the original recommendations was followed. The working group discussed the questions raised by FMCSA in relation to the original recommendations and the various options that were considered during the group's deliberations. Additional data relating to discretionary funding for border activities, with accompanying match requirements, prior to the FAST Act, as well as financial performance metrics and fund utilization for Territorial jurisdictions, was analyzed so the working group could understand and evaluate the

potential impact of FMCSA's suggestions. All of FMCSA's suggestions were evaluated based on the established guiding principles.

The working group concurred, based on the information provided by FMCSA, that an allocation of not more than 0.49 percent for the Territory Component adequately addresses CMV safety needs in the Territories. With respect to the Border Component allocation, the group agreed that an increase in the maximum allocation to 11 percent maintained Federal funding levels that were based on border enforcement needs and that the group's recommendation should be adjusted accordingly. The working group continued to find that a border maximum is necessary to maintain the balance of the funding levels between larger and smaller border States and to promote funding stability. An increase to a maximum of 55 percent was recommended because it meets the current needs of the State with the most border activity.

#### FMCSA's Proposed MCSAP Allocation Formula

FMCSA has reviewed the amended recommendations provided by the working group, agrees with the rationale for the proposed changes, and is adopting them in full. In this NPRM, FMCSA proposes a new MCSAP allocation formula as § 350.217. FMCSA proposes to adopt the working group's three components: A Territory Component; Border Component; and State Component.<sup>9</sup>

FMCSA supports establishing a separate Territory Component and the set-aside of not more than 0.49 percent of MCSAP funds for Territories. FMCSA proposes that each territory receive no less than \$350,000, with the remaining MCSAP funds allocated among Territories in a manner proportional to the Territories' populations, as reflected in the decennial census issued by the U.S. Census Bureau.

FMCSA proposes establishing a separate Border Component, using the formula that the working group recommended. Therefore, a maximum of 11 percent of MCSAP funds would be allocated to the Border Component with each border State receiving at least

<sup>9</sup> FMCSA proposes changing the name of the "Basic Component" to the "States Component" to provide a distinction between the proposed formula and the interim formula.

0.075 percent but no more than 55 percent of the total border allocation available. Additionally, FMCSA proposes using the term "share" instead of the term "FTE" used by the working group, because FMCSA does not want to inadvertently imply how many personnel should be employed at each port of entry as part of the funding allocation.

Under the share calculation, border States would receive 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 United States port of entry on the Mexican border, or 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 shares for each United States port of entry on the Canadian border with more than 1,000 annual CMV crossings.

FMCSA proposes establishing a State Component using the working group's Basic Component formula. At least 88.51 percent of MCSAP funds would be set aside for this component.

The table below shows estimated FY 2020 awards to each State and Territory under the interim funding formula, as prescribed by the FAST Act, and the new proposed formula. The FY 2020 FAST Act authorized amount of \$304,069,500 (after a 1.5 percent administrative takedown fund set-aside) was used to calculate the estimated awards. The Agency calculated the estimated funding for FY 2020 using the FY 2018 formula factor data, which was the most recent available at the time of calculation. Data used to calculate the formula may change each year so the funding shown is an estimated amount at that point in time. Please note the below table also provides an estimation of percentage difference in funding allotment comparing the interim formula to the proposed new formula (using estimated FY 2020 dollars). The hold-harmless and cap provisions proposed in this NPRM would mitigate any gain or loss in funding from the previous year's formula calculation. For example, if the newly proposed formula were implemented in FY 2020, no State would lose more than 3 percent, or gain more than 5 percent, compared to their share of the formula grant calculation in FY 2019. Therefore, the estimated FY 2020 funding shown in the table is not guaranteed.



ESTIMATED MCSAP FUNDING FORMULA COMPARISON <sup>a b</sup>

State/territory	Including Oregon			Excluding Oregon		
	FY 2020 estimated interim formula awards	FY 2020 estimated MCSAP formula award (new formula as proposed by FMCSA)	Percent difference	FY 2020 estimated interim formula awards	FY 2020 estimated MCSAP formula award (new formula as proposed by FMCSA)	Percent difference
Alabama	\$5,981,155	\$5,965,678	0	\$6,084,689	\$5,965,678	-2
Alaska	1,269,196	1,257,326	-1	1,269,068	1,257,326	-1
American Samoa	350,000	350,000	0	350,000	350,000	0
Arizona	11,234,838	10,804,840	-4	11,332,514	10,804,840	-5
Arkansas	4,371,959	4,138,170	-5	4,448,908	4,138,170	-7
California	18,590,048	19,145,982	3	18,587,874	19,368,217	4
Colorado	4,906,099	4,950,448	1	4,994,077	5,103,801	2
Connecticut	2,393,631	2,527,768	6	2,434,316	2,527,768	4
Delaware	1,251,260	1,166,066	-7	1,250,776	1,179,601	-6
District of Columbia	1,092,231	1,118,593	2	1,091,747	1,118,593	2
Florida	12,706,226	13,102,346	3	12,704,051	13,254,430	4
Georgia	10,223,708	10,443,179	2	10,394,519	10,443,179	0
Guam	350,000	439,941	26	350,000	439,941	26
Hawaii	1,066,679	1,099,298	3	1,066,422	1,099,298	3
Idaho	2,500,201	2,436,607	-3	2,541,685	2,436,607	-4
Illinois	11,177,027	11,285,176	1	11,359,365	11,634,765	2
Indiana	7,600,938	7,286,679	-4	7,728,822	7,286,679	-6
Iowa	5,004,354	4,837,215	-3	5,087,635	4,837,215	-5
Kansas	4,504,320	4,458,505	-1	4,584,021	4,458,505	-3
Kentucky	4,736,164	4,686,676	-1	4,819,511	4,784,186	-1
Louisiana	4,502,334	4,346,759	-3	4,581,061	4,346,759	-5
Maine	1,815,663	1,751,636	-4	1,842,792	1,751,636	-5
Maryland	3,898,791	4,175,980	7	3,970,778	4,175,980	5
Massachusetts	4,437,614	4,604,630	4	4,514,021	4,604,630	2
Michigan	8,663,352	8,967,604	4	8,805,741	9,224,388	5
Minnesota	6,711,732	6,422,249	-4	6,824,363	6,453,904	-5
Mississippi	4,008,984	3,893,741	-3	4,079,776	3,994,903	-2
Missouri	6,892,605	6,844,323	-1	7,014,924	6,975,820	-1
Montana	3,063,123	2,994,454	-2	3,102,581	2,994,454	-3
Nebraska	3,650,919	3,626,881	-1	3,709,539	3,626,881	-2
Nevada	2,596,460	2,584,009	0	2,643,932	2,664,056	1
New Hampshire	1,352,053	1,343,600	-1	1,351,569	1,384,743	2
New Jersey	7,038,352	6,943,724	-1	7,140,767	7,158,824	0
New Mexico	4,002,101	4,107,636	3	4,058,337	4,107,636	1
New York	13,199,642	12,842,509	-3	13,412,776	13,226,416	-1
North Carolina	8,730,173	8,972,029	3	8,880,140	9,249,962	4
North Dakota	2,889,717	2,696,955	-7	2,934,189	2,696,955	-8
Northern Marianas	350,000	350,000	0	350,000	350,000	0
Ohio	10,070,415	9,781,884	-3	10,250,889	10,046,336	-2
Oklahoma	5,927,263	5,769,781	-3	6,025,865	5,769,781	-4
Oregon	3,745,475	3,946,430	5	-	-	-
Pennsylvania	10,038,363	10,424,935	4	10,214,498	10,424,935	2
Puerto Rico	1,172,803	1,166,066	-1	1,195,818	1,179,601	-1
Rhode Island	1,356,289	1,300,175	-4	1,355,805	1,300,175	-4
South Carolina	4,824,547	4,796,236	-1	4,910,771	4,944,812	1
South Dakota	2,359,346	2,253,064	-5	2,400,857	2,253,064	-6
Tennessee	6,630,299	6,489,424	-2	6,743,955	6,683,303	-1
Texas	30,695,205	31,217,150	2	30,693,031	31,579,500	3
Utah	3,093,422	3,085,281	0	3,147,010	3,085,281	-2
Vermont	1,212,839	1,298,730	7	1,212,647	1,298,730	7
Virgin Islands	350,000	350,000	0	350,000	350,000	0
Virginia	6,760,878	6,895,938	2	6,879,407	7,109,558	3
Washington	6,566,316	6,457,545	-2	6,664,872	6,457,545	-3
West Virginia	2,297,186	2,171,592	-5	2,335,720	2,238,863	-4
Wisconsin	6,439,562	6,188,280	-4	6,548,726	6,363,493	-3
Wyoming	1,415,639	1,507,775	7	1,442,339	1,507,775	5
Total	304,069,500	304,069,500	0	304,069,500	304,069,500	0

<sup>a</sup> Estimated calculations for FY 2020 are shown both with and without the State of Oregon. Note that Oregon did not participate in FY 2019, but it may re-enter the program in the future.

<sup>b</sup> Calculation of funds for the proposed formula was made after setting aside 11 percent for the Border Component and 0.49 percent for the Territory Component of available MCSAP funds, and applying the hold-harmless and cap provisions as explained above.

### C. CVSP

This rulemaking would implement the FAST Act requirement that States use multi-year CVSPs in proposed §§ 350.209 and 350.211. This NPRM proposes to require that all States submit a CVSP covering a 3-year period. Currently, States are voluntarily submitting CVSPs covering a 3-year period based upon the **Federal Register** notice published on January 5, 2018 (83 FR 691) and the explicit requirement for the establishment of multi-year plans in section 5101(a) of the FAST Act (49 U.S.C. 31102(c)(1)).

FMCSA would expect to have approximately one-third of MCSAP applicants completing 3-year CVSPs in each grant application year, with the other two-thirds submitting annual updates. States would submit the 3-year CVSP, or the second and third year annual updates, to FMCSA by the date prescribed in the MCSAP application memorandum for that fiscal year.

#### First Year of the CVSP

FMCSA proposes to require that States submit through the eCVSP online tool the following prior to the first year of the CVSP:

(1) Quantitative objectives regarding the national MCSAP elements and related State-specific objectives for all 3 years;

(2) Analysis of past performance;

(3) Budget and resource allocation information for the first year of the CVSP;

(4) Monitoring plan;

(5) List of MCSAP contacts;

(6) Certification of MCSAP conformance;

(7) Annual certification of compatibility;

(8) New or amended laws and regulations relevant to CMV safety; and

(9) Additional information as required in the MCSAP application memorandum.

#### Second and Third Years of the CVSP

For the second and third years of the CVSP, States would provide an annual update, including that year's budget, and revise program goals and certifications, if needed. States would submit through the eCVSP online tool the following for the second and third years of the CVSP:

(1) Revised program goals, if needed;

(2) Budget and resource allocation information for the applicable fiscal year;

(3) List of MCSAP contacts;

(4) Certification of MCSAP conformance;

(5) New or amended laws and regulations relevant to CMV safety;

(6) Annual certification of compatibility; and

(7) Additional information as required in the MCSAP application memorandum.

### D. Performance and Registration Information Systems Management (PRISM)

To be eligible to receive MCSAP funding, each State must fully participate in PRISM by October 1, 2020, or use an alternative approach approved by FMCSA for identifying and immobilizing a motor carrier with serious safety deficiencies. To “fully participate” in PRISM, a State must satisfy the conditions of 49 U.S.C. 31106(b)(3), including the suspension (or revocation) and denial of a vehicle registration if the motor carrier responsible for safety of the vehicle is under any Federal out-of-service order. Therefore, this NPRM reflects the appropriate changes to MCSAP eligibility in proposed § 350.207(a)(27). However, the requirement for participation in PRISM by October 1, 2020, does not extend to the Territories, including Puerto Rico.

### E. Authorization and Appropriations Related Changes

The distribution of MCSAP funding is often impacted by FMCSA's authorizations and appropriations. Thus, a new provision is proposed as § 350.219 to explain the FMCSA Administrator's discretion (found generally in 49 U.S.C. 31102) to distribute funding during an extension of the Agency's authorization or during a period the Agency is operating under a continuing resolution.

### F. Relocation of 49 CFR Part 355—Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations

This NPRM would relocate relevant requirements of 49 CFR part 355 to part 350. FMCSA proposes this move to improve ease of use of the regulations and improve understanding of the inter-relationship between MCSAP and State laws. Remaining provisions of part 355, including the Appendix, would be eliminated. FMCSA would reserve the current part 355 for future use.

### G. 49 CFR Part 385 Subpart E—Hazardous Material Safety Permits

The rule proposes to clarify a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers to transport certain hazardous materials, as required under subpart E of 49 CFR part 385. These regulations require a motor carrier to hold a safety permit issued by FMCSA

and to keep a copy of the permit, or other proof of its existence, in the vehicle. Adding a requirement that States cooperate in the enforcement of subpart E of part 385 as a condition of MCSAP funding would clarify States' obligation to document compliance with hazardous materials permit requirements in the course of inspections that States conduct.

### H. Removal of 49 CFR Part 388—Cooperative Agreements With States

FMCSA is proposing to remove 49 CFR part 388, titled “Cooperative Agreements with States.” Part 388 predates MCSAP. Under its current statutory authority, FMCSA provides financial assistance to States to address CMV safety and to reduce the number and severity of crashes involving CMVs. This is conducted primarily through MCSAP, governed by part 350. While Congress provides funding to support MCSAP, there is no specific funding source supporting a financial assistance program under part 388. Thus, FMCSA does not rely on part 388 to enter into agreements with States to enforce Federal and State safety laws and regulations concerning motor carrier operations. FMCSA would reserve part 388 for future use.

### I. Other Proposed Changes

Because MCSAP has evolved through multiple authorization and appropriations acts, the existing regulations are redundant and not orderly. As stated above, this NPRM proposes an organizational change that separates MCSAP and the High Priority Program into distinct regulatory subparts under 49 CFR part 350. This NPRM proposes to reorganize part 350 so that the program requirements are clearer, more succinct, and presented chronologically from grant application through execution.

In addition, definitions would be updated and expanded to reflect the proposed changes to the grant programs or to otherwise provide consistency. For example, the definition of “investigation” is used rather than “compliance review” to reflect the revised national MCSAP elements. The definition of “motor carrier” in § 350.105 would be revised to be more consistent with the definition provided in § 390.5T. The definition of “HMRs” would be updated to include all of part 171 concerning HMRs. Specifically, the rule proposes to eliminate the exception to adopt §§ 171.15 and 171.16 by States participating in MCSAP. This would require those States that choose to conduct investigations to ensure compliance with the hazardous

materials incident reporting requirements contained in these sections. The elimination of this exception to the HMRs would not create a new State hazardous materials reporting requirement.

FMCSA would clarify in proposed § 350.305(b) that 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. However, to retain the exemption, it must continue to be in effect, it must apply to specific industries operating in intrastate commerce, and the scope of the original exemption must not have been amended.

#### J. Request for Comments

FMCSA is requesting public comment on all provisions being proposed in this NPRM. Additionally, the Agency is specifically seeking comment on the following questions.

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?

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?

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?

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?

4. 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?

#### 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

In addition to the substantive changes discussed below, FMCSA proposes stylistic, conforming, and organizational changes to the proposed rule for the purposes of clarity and consistency.

##### A. Subpart A—General

Proposed subpart A would provide a general overview and define the terms used in part 350 applicable to both MCSAP and the High Priority Program. Furthermore, the Agency proposes to restructure distinct provisions pertaining to MCSAP and the High Priority Program and codify them under separate subparts.

§ 350.101 What is the purpose of this part?

In this proposal, § 350.101 would be added to provide a general description of the purpose of part 350.

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

Proposed § 350.103 would be added to specify the effective date of the financial assistance program changes.

§ 350.105 What definitions are used in this part?

FMCSA proposes to add the following definitions to reflect phraseology used in this rulemaking: “border State,” “FMCSA,” “High Priority Program funds,” “investigation,” and “Motor Carrier Safety Assistance Program (MCSAP) funds.” The term “traffic enforcement,” which is defined in existing § 350.111, would be added to this section.

The definition of “commercial vehicle safety plan (CVSP)” would be revised to reflect that States would be required to submit 3-year CVSPs. FMCSA also proposes to modify the definition of “motor carrier” to more closely reflect the definition in § 390.5T. Furthermore, FMCSA proposes to modify the definitions of “FMCSRs” and “HMRs” to reference standards and orders issued under the respective regulations in order to avoid repeating this phraseology throughout the regulatory text. Conversely, references to standards and orders would be added throughout the regulatory text where appropriate when referring to State laws and regulations for consistency. Finally, in the definition of “HMRs,” the Agency proposes to update the definition to eliminate the exceptions for §§ 171.15 and 171.16 in existing §§ 350.337 and 355.5 in order to be consistent with existing § 350.201(a) and current

practice for those States that conduct investigations. Similarly, the inconsistency in existing § 355.5 concerning the definition of “HMRs” as it relates to the exception to part 107 would be eliminated. Consistent with existing § 350.337, the proposed definition would include subparts F and G of part 107.

The following existing definitions in § 350.105 would be eliminated because they are not used in this proposal: “10-year average accident rate,” “Accident rate,” “Agency,” “Basic Program Funds,” “Incentive Funds,” “Innovative Technology Deployment funds,” “Large truck,” “Level of effort,” “Operating authority,” and “Plan.”

The remaining definitions that appear in existing §§ 350.105 and 355.5 would be revised for clarity.

##### B. Subpart B—Motor Carrier Safety Assistance Program Administration

Proposed subpart B would provide an overview of MCSAP only. Content regarding the High Priority Program would be addressed in proposed subpart D.

§ 350.201 What is MCSAP?

Proposed § 350.201(a) is derived, in part, from existing § 350.101(a), but would add references to PRISM and border enforcement requirements, as applicable to MCSAP. Proposed § 350.201(b) is derived without substantive change from existing § 350.103 as it relates to program requirements. Proposed § 350.201(c) would incorporate the substantive content from the last sentence of existing § 350.101(a).

§ 350.203 What are the national MCSAP elements?

Proposed § 350.203 is derived, in part, from existing § 350.109. New items (e), (f), (g), and (j) would be added as part of revisions to MCSAP. Item (d), investigations, would be substituted for the existing reference to compliance reviews.

§ 350.205 What entities are eligible for funding under MCSAP?

Proposed § 350.205 is derived from existing § 350.107(a) without substantive change. Governmental entities eligible for funding would be reflected in the definition of “State.”

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

Proposed § 350.207(a) is derived, in part, from existing § 350.201, but is reorganized for clarity and to reduce redundancies. Proposed paragraph (a)(25) would be revised to reflect that

certain exemptions are granted, not just to individual drivers or carriers, but to a particular class. Proposed paragraph (a)(28) would be added to clarify a State's obligation to cooperate in the enforcement of hazardous materials safety permits. Proposed § 350.207(b) would incorporate the substance of existing § 350.201(z) relating to third parties conducting new entrant safety audits. Proposed § 350.207(c) would be added to reflect exceptions applicable to Territories concerning new entrant safety audits and participation in PRISM.

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

Proposed § 350.209 is derived, in part, from existing § 350.205, but revised to reflect the general requirements for submitting a 3-year CVSP. It also proposes that the deadline for the CVSP submission be changed from August 1 to a date that will be stated in the MCSAP application memorandum. It further proposes that the Administrator, rather than the Division Administrator, may extend the CVSP deadline.

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

Proposed § 350.211 is derived, in part, from existing §§ 350.209, 350.211, 350.213, and 350.331(b)(2). This proposed section would set forth information to be included for the first year of the CVSP. The required certifications would be consolidated in proposed paragraph (i) by referring to the conditions a State must meet to qualify for MCSAP funding in proposed § 350.207. Proposed paragraph (i)(3) would be added to clarify that the certifying official must have the necessary authority to certify the CVSP on behalf of the State. The proposed language would no longer require that a State training plan be included as part of the CVSP.

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

Proposed § 350.213 would be added to set forth the information to be submitted in the annual update for the second and third years of the CVSP.

§ 350.215 What response does a State receive to its CVSP or annual update?

Proposed § 350.215 is derived, in part, from existing § 350.207, but revised to reflect submissions under a 3-year CVSP. FMCSA would revise the proposed section to reflect current practice that a State receives a response to the CVSP within 30 days after FMCSA begins its review of the CVSP,

rather than within 30 days of receipt of the CVSP. It would also clarify circumstances under which States would not be eligible for MCSAP funding.

§ 350.217 How are MCSAP funds allocated?

Proposed § 350.217 sets forth the proposed MCSAP allocation formula and would replace existing §§ 350.313, 350.315, 350.317, 350.323, and 350.327. Under this proposal, the availability of Basic Program funds and Incentive funds would be incorporated into the State Component of the proposed formula. The new MCSAP allocation formula would also add a separate Border Component and a separate Territory Component.

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

Proposed § 350.219 would be added to address MCSAP funding under a continuing resolution appropriations act or an extension of the Agency's authorization.

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

Proposed § 350.221 is derived, in part, from existing § 350.307. Existing regulatory language requiring that funds be expended in the order that they are obligated would be eliminated because it is no longer necessary, given that FMCSA requires a fixed period of performance.

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

Proposed § 350.223 would consolidate existing §§ 350.303 and 350.305. In paragraph (b), references to 2 CFR part 1201 would be added to accompany the current references to 2 CFR part 200 (OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) to reflect that part 1201 addresses DOT's adoption and implementation of part 200. This reference is made in similar provisions throughout the proposed regulatory text. Language would be added in paragraph (c)(2) to clarify circumstances when a waiver of the State share may be granted.

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

Proposed § 350.225 is derived, in part, from existing § 350.301. Language would be added to reflect an additional maintenance of effort baseline

calculation option allowed under section 5101(f) of the FAST Act, as a one-time adjustment to the maintenance of effort permitted under section 5107 of the Act. Furthermore, a 120-day time period would be established for the Agency to evaluate requests for the maintenance of effort waivers. Finally, a provision would be added authorizing permanent adjustments after fiscal year 2020, reducing a State's maintenance of effort requirement, provided that new information was produced that was unavailable during fiscal year 2020.

§ 350.227 What activities are eligible for reimbursement under MCSAP?

Proposed § 350.227 would be generally the same as existing § 350.309 substantively, but would reflect the proposed expanded national program elements and changes to the MCSAP allocation formula.

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

Proposed § 350.229 is derived from existing §§ 350.311, 350.201(cc), and 350.341(h)(3). The list of reimbursable items in existing § 350.311 would be eliminated as unnecessary in light of the reference to the MCSAP application memorandum and title 2 of the CFR. Proposed paragraph (c)(2) would clarify that a State may not use MCSAP funds for the creation or maintenance of its own State registry of medical examiners.

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

Proposed § 350.231 would not be substantively changed from existing § 350.215, but would be modified for clarity.

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

Proposed subpart C would include information related to the MCSAP-required FMCSR and HMR compatibility review and variances available to States participating in MCSAP.

§ 350.301 What is the purpose of this subpart?

Proposed § 350.301 is derived, in part, from existing § 355.1. This proposed section would add an introductory paragraph for clarity and paragraph (d) to address the process for requesting exemptions for intrastate commerce.

§ 350.303 How does a State ensure compatibility?

Proposed § 350.303 is derived from existing §§ 350.331, 350.333, 355.21, 355.23, 355.25, and, in part, Appendix

A of part 355. It would consolidate the existing regulations to reduce redundancies. In proposed paragraph (c), language would be added to clarify that a review for compatibility must accompany any new or amended laws submitted to FMCSA in accordance to preferred practice. Proposed § 350.303(d) is revised to closer track the applicable statutory provision, 49 U.S.C. 31141. Proposed § 350.303(g)(2), addressing the opportunity for an administrative hearing, would be added to reflect a requirement under 49 U.S.C. 31141(d)(2). Language determined to be obsolete would be eliminated.

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

Proposed § 350.305 is derived from existing §§ 350.341 and 350.345. Language would be added in paragraph (b)(2) to clarify that the grandfathering of State exemptions issued before April 1988 only applies if the scope of the original exemption has not changed. Language determined to be obsolete would be eliminated, including § 350.341(g) that addresses grandfather clauses.

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

Proposed § 350.307 is derived, in part, from existing § 350.343. Existing paragraph (j) would be removed from this section, given that it has no bearing on safety.

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

Proposed § 350.309 is derived from existing §§ 350.335 and 355.25(a). The reference to “interstate” commerce in § 355.25(a) would be eliminated as inconsistent with the MCSAP requirements.

#### D. Subpart D—High Priority Program

The Agency proposes to add a new subpart D, describing the High Priority Program.

§ 350.401 What is the High Priority Program?

Proposed § 350.401 is derived from existing §§ 350.101(b) and 350.107(b).

§ 350.403 What are the High Priority Program objectives?

Proposed § 350.403 is derived from existing § 350.110. It would reorganize existing § 350.110 and add an objective

to reflect the Innovative Technology Deployment Program.

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

Proposed § 350.405 is derived from existing § 350.203 and would clarify that all applicants must comply with the High Priority Program Notice of Funding Opportunity (NOFO). The reference to a State’s obligation to provide a match of up to 15 percent under existing § 350.203(b)(5) would be eliminated as unnecessary in light of proposed § 350.413(a).

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

Proposed § 350.407 would not be substantively changed from existing § 350.206, but would be modified for clarity.

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

Proposed § 350.409 would not be substantively changed from existing § 350.208, but would be modified for clarity.

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

Proposed § 350.411 would not be substantively changed from existing § 350.308, but would be modified for clarity.

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

Proposed § 350.413 is derived from existing § 350.303. Language would be added to clarify circumstances when a recipient share of costs waiver may be granted.

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

Proposed § 350.415 is derived from § 350.310. It would cross-reference proposed § 350.403 for the High Priority Program objectives, rather than listing all eligible activities, for brevity.

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

Proposed § 350.417 is derived, in part, from existing § 350.311. The list of reimbursable items in existing § 350.311 would be eliminated as unnecessary in light of the reference to the NOFO and title 2 of the CFR. Proposed paragraph (b)(2) would be added to clarify that a State may not use High Priority Program

funds for the creation or maintenance of its own State registry of medical examiners.

#### E. Miscellaneous

The term “tolerance guidelines” in existing § 350.339 is no longer being used; therefore, the section would be removed. This concept, addressing variances and exemptions that States may permit for motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and that are not subject to Federal jurisdiction, is addressed under proposed §§ 350.305 and 350.307. Existing § 350.210, discussing how an applicant demonstrates that it satisfies the conditions for High Priority Program funding, would be deleted as unnecessary in light of proposed § 350.405.

Part 355 of title 49 of the CFR (Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations) would be removed and reserved. Substantive provisions of continued effect would be incorporated into this proposed rule. Remaining provisions of part 355, including the Appendix, would be eliminated. Part 388 (Cooperative Agreements with States) would be removed and reserved.

## IX. Regulatory Analyses

### A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of the proposed rule and determined it is a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011). Therefore, the proposed rule requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has reviewed it under that Order. It is also significant within the meaning of DOT regulatory policies and procedures because the Agency expects there will be substantial public interest in this rulemaking (DOT Order 2100.6 dated December 20, 2018).

E.O. 12866 directs each agency to identify the problem it intends to address, as well as the significance of that problem.<sup>10</sup> OMB Circular A–4<sup>11</sup>

<sup>10</sup> Executive Office of the President. *Executive Order 12866 of September 30, 1993. Regulatory Planning and Review*. 58 FR 51735–51744. October 4, 1993. Page 51735.

<sup>11</sup> Office of Management and Budget (OMB). *Circular A–4. Regulatory Analysis*. September 17, 2003.

and the accompanying document “Regulatory Impact Analysis: A Primer”<sup>12</sup> provide guidance for how agencies should implement E.O. 12866, including guidance on identifying and describing the problem that the regulatory action intends to address, and whether “the action is intended to address a market failure or promote some other goal.”<sup>13</sup>

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. Certain regulations are no longer necessary or are redundant. Moreover, the FAST Act required 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 proposed MCSAP formula would help the government to operate more efficiently by establishing a reallocation of grant funds based on changes in safety factors.

As explained elsewhere in this NPRM, this rule proposes a new MCSAP allocation formula to replace the current formula that has been in use for more

than a decade with little modification. The proposed MCSAP allocation formula would make several improvements over the current formula. The proposed formula was constructed based on a careful statistical analysis of the relationship between numerous highway safety variables and crashes (fatal and non-fatal). While this analysis revealed that several of the existing formula factors (e.g., population and special fuel consumption) remain highly correlated with crashes, newer data (carrier registration and highway miles) are available to more closely link the allocation of funding to safety risk.

The new formula also proposes changes that go beyond modifications to just the calculation methodology. First, the proposed formula discontinues the use of Incentive funds. Instead, the allocation of funds is based primarily on the calculation of the applicable formula factors. Further, mitigation measures are employed to ensure that State funding levels do not substantially fluctuate from year to year. Specifically, a State may not have a decrease of more than 3 percent, or an increase of more than 5 percent, from the prior year’s share of

MCSAP funding.<sup>14</sup> This helps the State ensure a degree of predictability to aid in budget planning while still allowing for fair allocation of funds.

The proposed MCSAP allocation formula would result in a reallocation of grant funding that would be considered a transfer payment, in that it would not change the total amount of funds distributed. In accordance with OMB guidance on conducting regulatory analysis (as discussed in OMB Circular A-4, “Regulatory Analysis”), transfer payments within the U.S. are not included in the estimate of the costs and benefits of rulemakings. Thus, FMCSA does not include transfers resulting from the proposed changes to the MCSAP allocation formula in its estimate of the costs and benefits of the proposed rule. The following table displays the amounts that States could expect to receive under both the interim and proposed formulas in FY 2020, given certain criteria (i.e., the inclusion of Oregon and the total amount of appropriated funds). The table is provided for informational purposes and is not a guarantee of a specific funding level.

ESTIMATED MCSAP FUNDING FORMULA COMPARISON<sup>a b</sup>

State/territory	FY 2020 Estimated interim formula awards		FY 2020 Estimated MCSAP formula award (new formula as proposed by FMCSA)	
	Including Oregon	Excluding Oregon	Including Oregon	Excluding Oregon
Alabama .....	\$5,981,155	\$6,084,689	\$5,965,678	\$5,965,678
Alaska .....	1,269,196	1,269,068	1,257,326	1,257,326
American Samoa .....	350,000	350,000	350,000	350,000
Arizona .....	11,234,838	11,332,514	10,804,840	10,804,840
Arkansas .....	4,371,959	4,448,908	4,138,170	4,138,170
California .....	18,590,048	18,587,874	19,145,982	19,368,217
Colorado .....	4,906,099	4,994,077	4,950,448	5,103,801
Connecticut .....	2,393,631	2,434,316	2,527,768	2,527,768
Delaware .....	1,251,260	1,250,776	1,166,066	1,179,601
District of Columbia .....	1,092,231	1,091,747	1,118,593	1,118,593
Florida .....	12,706,226	12,704,051	13,102,346	13,254,430
Georgia .....	10,223,708	10,394,519	10,443,179	10,443,179
Guam .....	350,000	350,000	439,941	439,941
Hawaii .....	1,066,679	1,066,422	1,099,298	1,099,298
Idaho .....	2,500,201	2,541,685	2,436,607	2,436,607
Illinois .....	11,177,027	11,359,365	11,285,176	11,634,765
Indiana .....	7,600,938	7,728,822	7,286,679	7,286,679
Iowa .....	5,004,354	5,087,635	4,837,215	4,837,215
Kansas .....	4,504,320	4,584,021	4,458,505	4,458,505
Kentucky .....	4,736,164	4,819,511	4,686,676	4,784,186
Louisiana .....	4,502,334	4,581,061	4,346,759	4,346,759
Maine .....	1,815,663	1,842,792	1,751,636	1,751,636
Maryland .....	3,898,791	3,970,778	4,175,980	4,175,980
Massachusetts .....	4,437,614	4,514,021	4,604,630	4,604,630
Michigan .....	8,663,352	8,805,741	8,967,604	9,224,388
Minnesota .....	6,711,732	6,824,363	6,422,249	6,453,904
Mississippi .....	4,008,984	4,079,776	3,893,741	3,994,903

<sup>12</sup> Office of Management and Budget (OMB). *Regulatory Impact Analysis: A Primer*.

<sup>13</sup> Office of Management and Budget (OMB). *Regulatory Impact Analysis: A Primer*. Page 2.

<sup>14</sup> In this respect, the States, the District of Columbia, and Puerto Rico are treated differently than the remaining Territories. The U.S. Census Bureau does not provide annual population

estimates for Territories other than Puerto Rico. Thus, these percentage limitations governing funding levels do not apply to these Territories.

ESTIMATED MCSAP FUNDING FORMULA COMPARISON <sup>a b</sup>—Continued

State/territory	FY 2020 Estimated interim formula awards		FY 2020 Estimated MCSAP formula award (new formula as proposed by FMCSA)	
	Including Oregon	Excluding Oregon	Including Oregon	Excluding Oregon
Missouri .....	6,892,605	7,014,924	6,844,323	6,975,820
Montana .....	3,063,123	3,102,581	2,994,454	2,994,454
Nebraska .....	3,650,919	3,709,539	3,626,881	3,626,881
Nevada .....	2,596,460	2,643,932	2,584,009	2,664,056
New Hampshire .....	1,352,053	1,351,569	1,343,600	1,384,743
New Jersey .....	7,038,352	7,140,767	6,943,724	7,158,824
New Mexico .....	4,002,101	4,058,337	4,107,636	4,107,636
New York .....	13,199,642	13,412,776	12,842,509	13,226,416
North Carolina .....	8,730,173	8,880,140	8,972,029	9,249,962
North Dakota .....	2,889,717	2,934,189	2,696,955	2,696,955
Northern Marianas .....	350,000	350,000	350,000	350,000
Ohio .....	10,070,415	10,250,889	9,781,884	10,046,336
Oklahoma .....	5,927,263	6,025,865	5,769,781	5,769,781
Oregon .....	3,745,475		3,946,430	
Pennsylvania .....	10,038,363	10,214,498	10,424,935	10,424,935
Puerto Rico .....	1,172,803	1,195,818	1,166,066	1,179,601
Rhode Island .....	1,356,289	1,355,805	1,300,175	1,300,175
South Carolina .....	4,824,547	4,910,771	4,796,236	4,944,812
South Dakota .....	2,359,346	2,400,857	2,253,064	2,253,064
Tennessee .....	6,630,299	6,743,955	6,489,424	6,683,303
Texas .....	30,695,205	30,693,031	31,217,150	31,579,500
Utah .....	3,093,422	3,147,010	3,085,281	3,085,281
Vermont .....	1,212,839	1,212,647	1,298,730	1,298,730
Virgin Islands .....	350,000	350,000	350,000	350,000
Virginia .....	6,760,878	6,879,407	6,895,938	7,109,558
Washington .....	6,566,316	6,664,872	6,457,545	6,457,545
West Virginia .....	2,297,186	2,335,720	2,171,592	2,238,863
Wisconsin .....	6,439,562	6,548,726	6,188,280	6,363,493
Wyoming .....	1,415,639	1,442,339	1,507,775	1,507,775
Total .....	304,069,500	304,069,500	304,069,500	304,069,500

<sup>a</sup> Estimated calculations for FY 2020 are shown both with and without the State of Oregon. Note that Oregon did not participate in FY 2019, but it may re-enter the program in the future.

<sup>b</sup> Calculation of funds for the proposed formula was made after setting aside 11 percent for the Border Component and 0.49 percent for the Territory Component of available MCSAP funds, and applying the hold-harmless and cap provisions as explained above.

FMCSA proposes to clarify 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 to transport certain hazardous materials. The proposed rule would ensure that all States would document compliance with hazardous materials safety permit requirements in the course of inspections that States conduct. State officials are already receiving training on subpart E of part 385, and FMCSA estimates that no new costs or benefits would result from this clarification.

This rule proposes to eliminate the exception to adopt §§ 171.15 and 171.16 in the HMRs by States participating in MCSAP. These provisions require incident reporting of certain hazardous materials incidents. This proposal would allow States to ensure compliance with these provisions during the course of investigations, but would not require States to conduct

investigations. Additionally, eliminating the exception would not expand the incident reporting burden. State officials are already receiving investigation training, which would include training on enforcement of §§ 171.15 and 171.16. Therefore, FMCSA estimates that no new costs or benefits would result from this elimination.

The proposed rule would require States to use CVSPs in accordance with the FAST Act. The rule would provide direction to States on how and when to submit CVSPs, which would be on 3-year cycles. Under the current regulations, States must submit lengthy annual CVSP applications to receive MCSAP funding. The proposed rule would require States to submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years. Specifically, for the first year of the CVSP, States would submit information regarding performance goals, 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 would 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. As of FY 2020, all 55 States have transitioned voluntarily to 3-year CVSPs, and thus, the Agency does not estimate an impact from this proposed change.

When considering alternatives to the proposed requirements, FMCSA considered requiring a CVSP cycle other than the proposed 3-year CVSP cycle. In a **Federal Register** notice published October 27, 2016, FMCSA asked 14 questions that would assist the Agency in developing an information technology system form and procedures for submission of a multi-year plan. Regarding questions on the length of the multi-year plan, responses to this question varied with some States indicating that they are not interested in a multi-year plan and some States

expressing interest in a 5-year plan. However, the largest number of States recommended a 3-year period. Regarding the accuracy of available data, all States confidently reported that they can provide complete and accurate data, with many States recommending 2 or 3 years for the multi-year plan. These States advised that their responses were specific to their recommended timeframes. These responses confirmed FMCSA's expectations. Section 5101 of the FAST Act requires the Secretary to prescribe procedures for a State to submit a multi-year CVSP with annual updates for MCSAP grants. The FAST Act provided discretion to FMCSA in choosing the length of the CVSP cycle. FMCSA is proposing to require a CVSP with a 3-year plan cycle. The 3-year CVSP proposal is informed by comments received to the October 27, 2016, **Federal Register** notice (81 FR 74862), the working group's recommendations, and necessary eCVSP tool modifications. Furthermore, FMCSA elected to test the 3-year CVSP with volunteers for the FY 2018 CVSP and receive feedback. FMCSA developed the 3-year CVSP proposal using the experience and feedback of the FY 2018 3-year CVSP users. As such, FMCSA believes that the 3-year CVSP would be the most advantageous for FMCSA and the CVSP users and is no longer considering a time-frame other than 3 years for the CVSP (see 83 FR 691, 692, January 5, 2018).

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

This proposed rule is neither expected to be an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action because there would be no cost impacts resulting from the rule.<sup>15</sup>

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857; 5 U.S.C. 601 *et seq.*), 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)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. 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 proposed 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. Under the standards of the RFA, as amended, States are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under Section 601(5) of the RFA, both because State government is not included 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, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under Section 601(5) of the RFA.

Although States would not be considered small entities, there is a possibility that other entities that could be considered small may be grant program applicants. 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 estimated impact of the proposed rule results from changes to MCSAP, which do not affect the High Priority Program applicants. As such, FMCSA does not estimate that these non-State entities would experience economic impacts as a result of the proposed rule.

In summary, this proposed rule would only impact States, which are not small entities. The proposed 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.

#### *D. Assistance for Small Entities*

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist

small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would 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, Jack Kostelnik, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed 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.

#### *E. 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 \$161 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

#### *F. Paperwork Reduction Act*

This proposed 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 proposed rule.

<sup>15</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.



### G. 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 proposal would 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.

### H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

### J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

### K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 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, Public Law 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.

### L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

### M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

### N. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of

OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

### O. E.O. 13175 (Indian Tribal Governments)

This proposed 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.

### P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (note following 15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

### Q. National Environmental Policy Act of 1969

FMCSA analyzed this proposed 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, March 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. The proposed requirements in this rule are covered by these CE and the proposed rule would not have any effect on the quality of the environment.

### List of Subjects

#### 49 CFR Part 350

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

#### 49 CFR Part 355

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

#### 49 CFR Part 388

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

In consideration of the foregoing, FMCSA proposes to amend 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—Motor Carrier Safety Assistance Program Administration

- 350.201 What is MCSAP?  
 350.203 What are the national MCSAP elements?  
 350.205 What entities are eligible for funding under MCSAP?  
 350.207 What conditions must a State meet to qualify for MCSAP funds?  
 350.209 How and when does a State apply for MCSAP funds using a CVSP?  
 350.211 What must a State include for the first year of the CVSP?  
 350.213 What must a State include for the second and third years of the CVSP?  
 350.215 What response does a State receive to its CVSP or annual update?  
 350.217 How are MCSAP funds allocated?  
 350.219 How are MCSAP funds awarded under a continuing resolution appropriations act 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?

- 350.229 What specific costs are eligible for reimbursement under MCSAP?  
 350.231 What are the consequences for failure to meet MCSAP conditions?

#### Subpart C—MCSAP Required Compatibility Review

- 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 and not subject to Federal jurisdiction?  
 350.307 How may a State obtain a new exemption for State laws and 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?  
 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. 13902, 31101–31104, 31108, 31136, 31141, 31161, 31310–31311, 31502; 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?

Unless otherwise provided, the changes to the FMCSA financial assistance programs under this part take effect for fiscal year 2020, beginning October 1, 2019.

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

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 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 safety laws and regulations, standards, and orders:

(1) As applicable to interstate commerce, that are identical to, or have the same effect as, the FMCSRs;

(2) As applicable to intrastate commerce, that:

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

(ii) Fall within the limited variances from the FMCSRs allowed under subpart C of this part; and

(3) As applicable to interstate and intrastate commerce involving the movement of hazardous materials, that 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 chapter 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 chapter.

*North American Standard Inspection* means the procedures used by certified safety inspectors to conduct various levels of safety inspections of the vehicle or driver.

*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.

*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—Motor Carrier Safety Assistance Program 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 requirements.* MCSAP requires States to:

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

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

(3) Adopt and enforce effective motor carrier, CMV, and driver safety regulations and practices consistent with Federal requirements; and

(4) Assess and improve 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 compatibility in the adoption and uniform enforcement of safety laws and regulations, standards, and orders.

### § 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 safety laws and regulations, standards, and orders, 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 chapter;

(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 has the legal authority, resources, and qualified personnel necessary to enforce compatible safety laws and regulations, standards, and orders;

(7) Provide satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic laws and regulations related to 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 safety laws and regulations, standards, and orders;

(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 or regulations, standards, and orders;

(25) Ensure that the State transmits to inspectors the notice of each Federal exemption granted under subpart C of part 381 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;

(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 chapter; 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 CVSP, or the annual updates, to FMCSA by the date prescribed in the MCSAP application memorandum for the fiscal year.

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

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

(a) *General.* (1) The first year of the CVSP must comply with the MCSAP application memorandum and, at a minimum, provide 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) The first year of the CVSP 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.* The first year of the CVSP must explain the rationale for the State's resource allocation decisions.

(d) *Specific activities.* The first year of the CVSP 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.* The first year of the CVSP must include performance objectives, strategies, and activities stated in quantifiable terms, that are to be achieved through the CVSP.

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

(g) *Budget.* The first year of the CVSP 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.* The first year of the CVSP 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 the State maintains required compatibility.

(2) If a State CMV safety law or regulation, standard, or order 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 or regulation affecting CMV safety that was enacted by the State since the last CVSP or annual update was submitted.

(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 memorandum 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 State must submit an annual update that complies with the MCSAP application memorandum and, at a minimum, must include program goals, certifications, other information revised since the prior year's CVSP, 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 CMV safety laws and regulations, standards, and orders are compatible.

(2) If a State CMV safety law or regulation, standard, or order 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 or regulation affecting CMV safety that the State enacted since the last CVSP or annual update was submitted.

(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 memorandum for that fiscal year.

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

(a) *First year of the CVSP.* (1) FMCSA will notify the Lead State Agency within 30 days after FMCSA begins its review of a 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 safety laws and regulations, standards, and orders.

(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 has 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.

(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 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) 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 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.* (1)(i) At least 88.51 percent of the MCSAP funds must be allocated in accordance with this paragraph among the eligible States, including 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 must 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 and cap.* (1) The dollar amounts calculated under paragraphs (c)(6) and (d)(5) of this section will be totaled and then divided by the total MCSAP funds to determine a State's percentage of the total MCSAP funds.

(2) Each State's total percentage of its 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 overall MCSAP funding in that prior year.

(3) Proportional adjustments will be made to ensure that each State's percentage of MCSAP funds as calculated under subparagraph (1) of this paragraph 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.

(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 appropriations act or an extension of FMCSA's authorization?**

In the event of a continuing resolution appropriations act 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 FMCSA policy.

(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 FMCSA policy.

(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 memorandum; 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 equal to the average aggregate expenditure of the Lead State Agency 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 2020, as adjusted under section

5107 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, 129 Stat. 1312, 1532-1534 (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.

(c) *Costs.* (1) 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) A State must include only those activities that meet the current requirements for funding eligibility under the grant program.

(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 2020, 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 2020.

**§ 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.* Documented enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs, including documented enforcement of such laws and regulations relating to non-CMV when necessary to promote the safe operation of CMVs, are eligible for reimbursement under MCSAP if:

(1) 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

(2) The State does not use more than 10 percent of its MCSAP funds for enforcement activities relating to non-CMV necessary to promote the safe operation of CMVs, 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 publish those criteria in policy or the MCSAP application memorandum 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 memorandum 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, including the availability of variances or exemptions allowed under § 350.305 or § 350.307, to:

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

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

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

(d) Provide States with a process for requesting 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 safety laws and regulations, standards, and orders to ensure compatibility.

(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 and regulations, standards, and orders to ensure compatibility.

(c) *State adoption of CMV law or regulation.* A State must submit to FMCSA a copy of any new or amended State safety law and regulation, standard, and order relating to 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 and regulations, standards, and orders relating to CMV safety, including those of its political subdivisions, for compatibility and report in the CVSP, or annual update, as part of its application for funding under § 350.209 each fiscal year.

(2)(i) The State must demonstrate whether its laws and regulations, standards, and orders relating to CMV safety are identical to or have the same effect as a corresponding provision of the FMCSRs, are in addition to or more stringent than provisions of the FMCSRs, or are less stringent than a corresponding provision of the FMCSRs.

(ii) If a State's law or regulation, standard, or order relating to CMV safety is identical to or has the same effect as the corresponding provision of the FMCSRs, the State provision is enforceable.

(iii) If a State's law or regulation, standard, or order relating to CMV safety is in addition to or more stringent than the provisions of the FMCSRs, in order to be enforceable, the State must demonstrate that:

(A) The State provision has a safety benefit;

(B) It is compatible with the FMCSRs; and

(C) Enforcement would not cause an unreasonable burden on interstate commerce.

(iv) If a State's law or regulation, standard, or order relating to CMV safety is less stringent than the FMCSRs, it is not enforceable, unless it falls within the provisions of §§ 350.305 or 350.307.

(3) The State must demonstrate that its laws and regulations, standards, and orders relating to CMV safety applicable to both interstate and intrastate

commerce are identical to the corresponding provision of the HMRs.

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

(5) Definitions of words or terms in a State's laws and regulations, standards, and orders relating to 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 CVSP or annual update, must include:

(i) A copy of any State law or regulation, standard, or order relating to 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 and regulations, standards, and orders relating to CMV safety remain compatible, and that provides the name of the individual responsible for the annual review.

(2) If State laws and regulations, standards, and orders relating to 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 or regulation, standard, or order 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 or regulation, standard, or order 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 State or person 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 and 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 exemptions—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 exemptions—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) 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 chapter 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 chapter;

(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 chapter 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 in effect 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 safety law or regulation, standard, or order:

(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 and 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 that other State agencies not participating in MCSAP enforce;

(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 or regulation, standard, or order relating to CMV safety in commerce that the Administrator finds not to be compatible.

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

(1) If a State enacts a law or regulation, standard, or order relating to CMV safety that is not compatible;

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

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

(c) *Hazardous materials.* Any decision regarding the compatibility of a State law or regulation, standard, or order relating to 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 for interpretation before proceeding under § 350.231.

**Subpart D—High Priority Program**

**§ 350.401 What is 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 and safety data improvement projects 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 and safety data improvement projects 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;

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

(j) Otherwise improve CMV safety.

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

(a) *States.* To qualify for High Priority Program funds, a State must:

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

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

(b) *Other applicants.* To qualify for High Priority Program funds, applicants other than States must, to the extent applicable:

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

(2) 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;

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

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

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

(6) 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;

(7) 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

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

**§ 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.

**§ 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) *General.* 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 that the funds are obligated and the next 2 full fiscal years.

(b) *Innovative Technology Deployment.* 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 that 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 policy.

(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: August 12, 2019.

**Raymond P. Martinez,**  
*Administrator.*

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