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[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 350

Docket No. FMCSA-2016-0149

RIN 2126-AB91

Amendments to Implement Grants Provisions of the Fixing America's Surface Transportation Act

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts, as final, certain regulations required by the Fixing America's Surface Transportation Act (FAST Act) enacted on December 4, 2015. The involved statutory changes went into effect on October 1, 2016, and require that FMCSA make conforming changes to its regulations to ensure they are current and consistent with the statutory requirements. Adoption of these rules is a nondiscretionary, ministerial action that FMCSA may take without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the good cause exception available to Federal agencies under the Administrative Procedure Act.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION]. Petitions for Reconsideration must be received by the Agency no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

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SUPPLEMENTARY INFORMATION:

I. EXECUTIVE SUMMARY

A. Purpose and Summary of the Major Provisions

This rule makes nondiscretionary, ministerial changes to FMCSA regulations that are required by the FAST Act (Pub. L. 114-94, 129 Stat. 1312, December 4, 2015). The FAST Act made several notable changes to the grant programs administered by FMCSA. For example, it consolidated the Border Enforcement, New Entrant, and Performance and Registration Information Systems Management (PRISM) grants into the formula Motor Carrier Safety Assistance Program (MCSAP) grant. Each State is now required to fully participate in the PRISM program by October 1, 2020, as a condition to receive funding under MCSAP. The FAST Act also created a standalone High Priority financial assistance (High Priority) Program with two major purposes: activities related to motor carrier safety and Innovative Technology Deployment (ITD). The ITD program modifies and replaces the FMCSA's Commercial Motor Vehicle Information Systems and Networks (CVISN) program. Also, the Safety Data Improvement Program, which was previously a standalone grant program, has been merged into the High Priority Program. A full explanation of all changes made in this rule is included below in section

III. FAST Act Provisions Implemented by this Rulemaking. A copy of the FAST Act has been placed in the docket for this rulemaking for reference.

B. Benefits and Costs

The impact of the FAST Act provisions to certify eligibility and allocate MCSAP and High Priority Program funds considered both individually and in the aggregate does not cross the threshold of economic significance; therefore a cost-benefit analysis is not required.¹

The economic impact of changes to make FMCSA's regulations consistent with the FAST Act provisions will not exceed the \$100 million annual threshold specified by Executive Order 12866.² FMCSA determines that any costs associated with this action are attributable to the non-discretionary statutory provisions. FMCSA's consideration of the net impact of the FAST Act provisions suggests that reimbursements for technology, staffing, enforcement, maintenance, and training activities related to FMCSA regulations should ease the economic burden on regulated entities. Consequently net impacts of these provisions are expected to be small and affect a small number of individuals and businesses.

II. LEGAL BASIS FOR THE RULEMAKING

A. FAST Act

This rule is based on the FAST Act. Certain provisions of the FAST Act made mandatory, non-discretionary changes to FMCSA programs. The majority of these

¹ Section 3(f) of Executive Order 12866 defines a "significant" regulatory action as one that satisfies any of four conditions: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. Rules fitting the first of these conditions are often referred to as "economically significant" regulatory actions.

statutory changes went into effect retroactively on October 1, 2015; the Agency published a final rule on July 22, 2016 (81 FR 47714) which made these changes.

However, the changes made in sections 5101 and 5106 of the FAST Act, which affect the Agency's MCSAP grants, did not take effect until October 1, 2016. This final rule makes the nondiscretionary, conforming changes required by FAST Act sections 5101 and 5106, which also relate to the MCSAP. Publication of today's rule triggers the 3-year window for the States to adopt compatible provisions under FMCSA's MCSAP program. 49 CFR 350.331(d), 350.335(a)(2), and part 355, App. A.

It is necessary to make conforming changes to ensure that FMCSA's regulations are current and consistent with the applicable statutes. The provisions implemented in this final rule are required by the following sections of the FAST Act:

1. Section 5101 Grants to States.
2. Section 5106 Motor Carrier Safety Assistance Program Allocation.

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

B. Administrative Procedure Act

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (d). Section 553(b)(3)(B), allows an exception from these requirements when notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest." FMCSA finds that prior notice and opportunity for comment are unnecessary because the changes to the regulations found in this final rule are statutorily mandated, and the Agency is

performing a nondiscretionary, ministerial act. For the same reason, FMCSA also finds that providing 30 day of advance notice prior to this rule becoming effective are unnecessary, pursuant to 5 U.S.C. 553 (d)(3).

C. FAST Act Waiver of Advance Notice of Proposed Rulemaking/Negotiated Rulemaking

FMCSA is aware of the regulatory reform requirements imposed by section 5202 of the FAST Act concerning public participation in rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules, but because this final rule is not major, they are not applicable. In addition, the Agency finds that publication of an advance notice of proposed rulemaking under 49 U.S.C. 31136(g)(1)(A) or completion of a negotiated rulemaking under 49 U.S.C. 31136(g)(1)(B), is unnecessary and contrary to the public interest in accordance with the waiver provision in 49 U.S.C. 31136(g)(3).

III. FAST ACT PROVISIONS IMPLEMENTED BY THIS RULEMAKING

This section describes the conforming changes required due to the FAST Act changes. Today’s rule focuses on portions of the FAST Act that are non-discretionary.

FMCSA is also including here a table of affected sections of the Code of Federal Regulations (CFR), which will cross-reference corresponding requirements of the FAST Act. This table will make it easier for the reader to move back and forth between the revised regulations and the corresponding section(s) of the FAST Act.

TABLE OF CFR SECTIONS AFFECTED

CFR Section	FAST Act Section	49 U.S.C. §
350.101	5102 [129 Stat. 1312, 1526]	31102(1)(2) and (3)
350.103	5102 [129 Stat. 1312, 1526]	31102(1)(2) and (3)
350.105	5101 [129 Stat. 1312, 1514]	31102(c)(2)(U), (Y),(AA),(BB) 31102(l)

350.107	5101 [129 Stat. 1312, 1514]	31102(c) and 31102(l)(2) and (3)
350.110(new)	5101 [129 Stat. 1312, 1514]	31102 (l)(2) and (3)
350.201	5101 [129 Stat. 1312, 1514]	31102(c)(2)(U), (Y), (AA), (BB)
350.203(new)	5101 [129 Stat. 1312, 1514]	31102 (l)(2) and (3)
350.206(new)	5101 [129 Stat. 1312, 1514]	31104
350.207	5101 [129 Stat. 1312, 1514]	31102(ii)
350.208(new)	5101 [129 Stat. 1312, 1514]	31104(a)
350.210(new)	5101 [129 Stat. 1312, 1514]	31102(l)(2)
350.213	5101 [129 Stat. 1312, 1514]	31102((c)(2)(O))
350.215	5101 [129 Stat. 1312, 1514]	31102(k)(2)
350.301	5101 [129 Stat. 1312, 1514]	31102(f)
350.303	5101 [129 Stat. 1312, 1514]	31104(b)
350.308(new)	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3)
350.309	5101 [129 Stat. 1312, 1514]	31102(h)
350.310(new)	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3)
350.311	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3), 31102(c)(2), and 31104
350.313	5101 [129 Stat. 1312, 1514]; 5106 [129 Stat. 1312, 1530]	31102(j)
350.319	5101 [129 Stat. 1312, 1514]	31102(l)
350.321	5101 [129 Stat. 1312, 1514]	31102
350.323	5101 [129 Stat. 1312, 1514]; 5106 [129 Stat. 1312, 1530]	31102(j), 31107, 31144(g)
350.329	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3)
350.331	5101 [129 Stat. 1312, 1514]	31102(e)
350.335	5101 [129 Stat. 1312, 1514]	31102(e), and (k)(2)

Section 5101 Grants to States.

Section 5101 of the FAST Act made several revisions to existing provisions found in title 49 of the United States Code (U.S.C.). Section 5101(a) enacted a new version of 49 U.S.C. 31102, renamed “Motor Carrier Assistance Program.” The changes made to section 31102 are outlined below. The FAST Act added the terms “Federally recognized Indian tribes and other persons” as those who could work in partnership with the Agency in 49 U.S.C. 31102(b)(1), so we are making corresponding changes in §§ 350.101, 350.103, and 350.107 of the regulations.

In 49 U.S.C. 31102(c)(2)(B), the FAST Act replaced the reference to the State motor vehicle safety agency with reference to a “lead State commercial motor vehicle safety agency.” FMCSA makes this change throughout part 350. In addition, the FAST Act changed section 31102(c)(2) by revising the order of subsections (A) through (Y) and added new subsections (Z) through (BB). These changes are reflected in §§ 350.201 and 350.211. Of particular note is subsection (Z), which requires “that the State agrees to fully participate in the Performance and Registration Information System Management under 49 U.S.C. 31106(b) not later than October 1, 2020” or “an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.” This provision is reflected in § 350.201(aa) and § 350.211(x).

The Fast Act moved the existing language of 49 U.S.C. 31102(b)(3) on disapproval of a State plan to subsection (i)(2) of U.S.C. 31102. The Agency updated the regulatory language in § 350.207 to reflect the changes.

The FAST Act added 49 U.S.C. 31102(f)(4)(B), which creates additional allowances for the States when determining their average levels of expenditure for purposes of maintenance of effort. States are allowed to exclude expenditures for activities related to border enforcement and new entrant safety audits. This addition is reflected in § 350.301(b)(2).

The FAST Act also added paragraph (h) of 49 U.S.C. 31102 (existing 31102(c)), to describe an additional area where the grants may be used to enforce other laws. Subsection (1)(B) includes the “detection of and enforcement actions taken as a result of criminal activity including the trafficking of human beings, in a commercial motor vehicle or by any occupant, including the operator.” The Agency updated the language in § 350.309 to reflect this change.

Section 31102(k)(2)(B)(i-iv) now specifies what percentage of MCSAP funds may be withheld when a State does not follow its submitted plan or fails to enforce State regulations adequately. These criteria are reflected in § 350.215.

Section 31102(l) is added by the FAST Act, and it describes the High Priority Program funded for the purposes of improved motor carrier safety and Innovative Technology Deployment. This is a financial assistance program, and, is available to a wider audience and described throughout part 350. For reference, the current Safety Data Improvement Program falls under this new High Priority program.

Section 31104 is revised by the FAST Act section 5101(c), and paragraph (b) describes the Federal and recipient shares of Federal financial assistance agreements as at least 85 percent. Paragraph (e) provides that the Secretary shall establish eligible activities for each Federal financial assistance agreement in a notice of funding

availability. Paragraph (f) describes the period of availability for the Federal financial assistance agreements. Paragraph (g) describes the initial date of availability for the Federal financial assistance agreements.

Paragraphs (b) and (d)-(g) of section 5101 of the FAST Act do not require corresponding changes in the regulations at this time.

Section 5106 Motor Carrier Safety Assistance Program Allocations.³

Section 5106 of the FAST Act requires the establishment of a working group to recommend a new MCSAP allocation formula reflecting certain factors specified in the statute. However, paragraph (d) of section 5106 outlines interim funding rules to be used until the new formula is established. The interim amount, calculated by utilizing the MCSAP allocation formula used in fiscal year 2016 plus the average of the funding awarded (or other equitable amounts) to a State in fiscal years 2013, 2014, and 2015 for border enforcement and new entrant grants, is reflected in § 350.323. Likewise, § 350.323 has been revised to include the caveat, also found in section 5106(d), that the initial amounts resulting from the calculation described above be adjusted to ensure that, subject to the availability of funding, for each State, the amount shall not be less than 97 percent of the average amount of funding received or other equitable amounts in fiscal years 2013, 2014, and 2015 for MCSAP grants, border enforcement grants, and new entrant grants.

V. SECTION-BY-SECTION ANALYSIS

³ The effective date for section 5106 was October 1, 2015 (see FAST Act section 1003, 129 Stat. 1312, 1322), which differs from the October 1, 2016, effective date for section 5101 (see FAST Act section 5101(f), 129 Stat. 1312, 1526). The Agency opted to include Section 5106 in this final rule, and not its earlier final rule implementing other nondiscretionary FAST Act changes made by the FAST Act that also went into effect on October 1, 2015. This is due to the fact that the subject matter of section 5106 more closely aligned with that of section 5101. Additionally, as there have not yet been grants made according to the formula outlined in section 5106 (and being implemented in this final rule), accordingly, there has been no harm in delaying regulatory implementation of section 5106.

The following is a description of the changes to Part 350 as a result of the requirements of the FAST Act. These changes are described in numerical order by CFR citation. FMCSA also made conforming changes to the regulatory language as well as editorial corrections, so that the regulations do not conflict with the FAST Act.

A. Part 350, Subpart A

Section 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program?

In accordance with the FAST Act, section 5101(a), adding section 31102(l), FMCSA changes the heading of § 350.101 to add a reference to a High Priority Program. Paragraph (a) is changed by adding the word “State” to clarify that it is referencing State safety rules, regulations and standards. Paragraph (b) is added to describe the High Priority Program.

Section 350.103 What is the purpose of this part?

In the undesignated introductory text of § 350.103, FMCSA adds a reference to “States, local government agencies, other political jurisdictions, federally recognized Indian tribes, and other organizations and persons” which are eligible for the High Priority Program, as stated in the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l).

Section 350.105 What definitions are used in this part?

FMCSA removes the definitions of “High Priority Activity Funds,” and “New Entrant Funds” Definitions are added for “Innovative Technology Deployment Funds,” “Lead State Agency,” “Level of effort,” “Maintenance of effort,” and “Plan.”

In the definitions of “10-year average accident rate” and “Accident rate,” the reference to FMCSA is changed to Federal Highway Administration.

In the definition for “Basic Program Funds,” the references for High Priority

Activity Funds and New Entrant Funds are removed.

FMCSA adds the words “or the Plan” to the definition of “Commercial Vehicle Safety Plan (CVSP).”

FMCSA adds a definition for “New Entrant Safety Audits” to describe the requirement under the FAST Act, section 5101(a), amending 49 U.S.C. 31102(c)(2)(Y).

In the definition of “Operating Authority,” a reference to 49 U.S.C. 31144 is added.

“State or States,” is moved here from § 350.107 since it applies to all of part 350.

Section 350.107 What entities are eligible for funding under this part?

The heading for § 350.107 is changed to replace the word “jurisdictions” with “entities,” to add “under this part,” and to remove the reference to MCSAP.

The Agency redesignates the existing section as paragraph (a) and adds a reference to MCSAP at the beginning of the paragraph. The definition of “State or States,” is moved to the definition section in § 350.105.

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l), we added a new paragraph (b) to section 350.107 that describes the entities eligible for funding in the High Priority Program.

Section 350.109 What are the national Motor Carrier Safety Assistance Program (MCSAP) elements?

FMCSA adds “Motor Carrier Safety Assistance Program (MCSAP)” to the heading of § 350.109 to clarify that the elements apply to the MCSAP Program.

Section 350.110 What are the national High Priority Program elements?

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l), the Agency adds § 350.110 to describe the national High Priority Program elements.

B. Section 350, Subpart B

Section 350.201 What conditions must a State meet to qualify for MCSAP Funds?

The FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(A-BB) requires amendments to the conditions a State must qualify for MCSAP funds.

In § 350.201, the adjective MCSAP is added to the heading. In paragraph (a) the words “standards, and orders” are added. Paragraph (b) is not changed. The word “Lead” is added to paragraph (c) to reflect the agency responsible for the plan throughout the States. In paragraphs (d) and (e), the words “standards, and orders” are added to reflect the statutory language.

Paragraph (f) is rewritten to cross-reference the maintenance of effort requirements now re-codified in § 350.301 in accordance with FAST Act section 5101(a), adding 49 U.S.C. 31102(f). In paragraph (g), the words “legal authority for” are removed. The Agency removes the words “prepare and submit” and replaces them with “provide” in paragraph (h). Paragraph (i) is changed to reflect the language of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(G).

In paragraph (j) the word “declare” is replaced with “demonstrate.” Paragraph (k) has no changes. In paragraph (l) the words “other CMV safety enforcement programs” are replaced with “development and implementation of the programs to improve motor carrier, CMV, and driver safety.” Paragraph (m) is unchanged.

Paragraph (n) reflects the addition of the words “and data systems” to “FMCSA information technology.” No changes are made to paragraphs (o) and (p). Paragraph (q) (1) and (2) are the same, however, section 5101(a) of the FAST Act adding 49 U.S.C.

31102(c)(2)(O), required a change to (3) to reflect “activities related to criminal interdiction,” not only those “affecting the transportation of controlled substances.”

Existing paragraph (r) is removed. Existing paragraph (s) becomes new paragraph (r) and is not changed. Existing paragraph (t) becomes new paragraph (s) and is changed by updating the citations. New paragraph (t) is moved from existing paragraph (u) and simplified. Existing paragraph (v) becomes new paragraph (u) and removes the words “MCSAP agencies have policies that stipulate.” New paragraph (v) is existing paragraph (w) revised. Existing paragraph (x) is now new paragraph (w) with introduction of “provide that the State will.” In making these changes, paragraphs (r) and (v) are no longer conditions of participation.

New paragraph (x) is derived from existing paragraph (y) with the addition of “excluding a weigh station,” as required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(W). New paragraph (y) is existing paragraph (z) with changed CFR citations and one additional U.S.C citation. New paragraphs (z), (aa), (bb), and (cc) are copied directly from the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(Y-BB).

Section 350.203 What conditions must an applicant meet to qualify for High Priority Program Funds?

The contents of existing § 350.329 are moved to new § 350.203. The changes and the reorganization conform to the requirements of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l). The heading of the section is changed; it uses the term “applicant,” clarifying that High Priority program funding is available to other entities identified in § 31102(l)(2), in addition to “a State or local agency,” Paragraph (a) is unchanged. FMCSA changes the introductory text of paragraph (b), using the term “applicants” rather than

“local agencies” and providing a cross reference. Paragraphs (b)(1) through (4) and (b)(6) through (9) are mostly unchanged from the existing rule; however, clarifying language was added to expand the range of entities eligible for High Priority Program funds. As required by section 31104(b), as amended by the FAST Act section 5101(c), in paragraph (b)(5), FMCSA lowered the amount that an applicant must agree to fund from 20 percent to 15 percent.

Section 350.205 How and when does a State apply for MCSAP funding?

FMCSA requires the State to submit its commercial vehicle safety plan “to FMCSA,” instead of to “the Division Administrator/State Director.”

Section 350.206 How and when does one apply for High Priority Program funding?

As stated in the FAST Act section 5101(c), amending 49 U.S.C. 31104(e), FMCSA adds a new § 350.206 to demonstrate that FMCSA will publish a Notice of Funding Availability (NOFA) to establish criteria for eligible activities to be funded under the High Priority Program, paralleling § 350.205.

Section 350.207 What response does a State receive to its CVSP submission?

To conform to the language of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(i), FMCSA changes paragraph (b) by adding that FMCSA will give the State a written explanation for withholding approval and allow the State to modify and resubmit the Plan. In paragraph (c), FMCSA adds that disapproval of the Plan is final only for “that fiscal year.” Paragraph (d) is unchanged.

Section 350.208 What response will the applicant for a High Priority Program receive?

The FAST Act did not amend the current process, but separated the MCSAP and High Priority Programs (section 5101(a), adding 49 U.S.C. 31102(l)). FMCSA adds a

new § 350.208 to state the response an applicant will receive to a grant application, paralleling § 350.207 to demonstrate the separation of the MCSAP and High Priority Grant Programs. Paragraph (a) covers grant approvals, and paragraph (b) covers grant denials.

Section 350.210 How does an applicant demonstrate it satisfies the conditions for High Priority Program Funding?

FMCSA adds new § 350.210 to refer applicants for High Priority Program Funding to new § 350.203, which describes the conditions the applicant must meet to qualify, which were established in 49 U.S.C. 31102(l), and to parallel existing § 350.209

Section 350.211 What is the format of the certification required by § 350.209?

Section 350.211 describes the format of the certification required by § 350.209. It is revised and reorganized to conform to the language of the FAST Act, section 5101(a), amending 49 U.S.C. 31102. The introductory text is unchanged. In paragraph ((a), FMCSA added references to “standards and orders” and “the standards and orders of the Federal Government.” In ((b), the language was changed to include references to “Lead State Agency” and standards and orders. Paragraph (c) is changed by adding a reference to standards and orders. In paragraph (d), FMCSA adds “or other method a State may use that is adequate to obtain the necessary information” as an alternative to right of entry. Paragraph (e) is not changed. In (f), FMCSA adds a reference to “investigations.” Paragraph (g) is modified by substituting the word “demonstrate” for “declare.” Paragraph (h) is based on existing paragraph 8, but completely changed to conform to the FAST Act, section 5101(a), creating 49 U.S.C. 31102(f). A new paragraph (i) is added to ensure States protect the effectiveness of programs to improve safety.

Existing paragraphs 9 through 14 are redesignated as new paragraphs (j) through (o), and conformed to the language of the FAST Act, section 5101(a), adding 31102(c)(2)(J)-(O). New paragraph (j) is unchanged. In new paragraph (k), the word “fines” is changed to the word “sanctions”; and the word “equitable” is changed to the word “reasonable” per section 5101(c) of the FAST Act. New paragraph (l) is changed by adding the requirement that the State “dedicate sufficient resources” to a program that provides FMCSA with information. In new paragraph (m), FMCSA adds a new reference to 23 U.S.C. 148(c). FMCSA adds “regulations” to the list of items a State should enforce in new paragraph (n). In new paragraph (o), FMCSA removes the reference to MCSAP Agencies. Existing paragraph 15 is removed.

New paragraph (p) is the same as existing paragraph 16. New paragraph (q) substitutes the word “registration” for the phrase “operating authority” throughout, and adds a reference to the U.S. Code. In paragraph (r), FMCSA states that the State “will cooperate in the enforcement of financial responsibility” rather than “enforce the financial responsibility requirements.” It also adds a reference to the U.S. Code and removes a cross reference to § 392.9a. Paragraphs (s) and (t) remain the same. Paragraph 21, new paragraph (u), is changed by adding language to clarify that station means bus station. The phrase “excluding a weigh station” is added to clarify that planned stops do not include weigh stations, as required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(W). In paragraph (v), cross references to the CFR are added.

Paragraphs (w) through (z) are new and required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(Y) - (Z). Paragraph (w) requires the State to conduct safety audits of new entrant motor carriers. The State must also verify the work

of third parties that conduct safety audits on the State's behalf. Paragraph (x) provides that the State must certify that it either participates in the PRISM or demonstrates an alternative approach for identifying and taking action on out of service motor carriers.

As amended by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(AA), paragraph (y) provides that a border State must conduct a border CMV safety program or forfeit MCSAP funds based on border-related activities. In accordance with the FAST Act, section 5101(a) adding 49 U.S.C. 31102(c)(2)(BB), if a State meets all the MCSAP requirements and funds operations and maintenance costs associated with innovative technology deployment, paragraph (z) requires the State to certify that it agrees to comply with "all MCSAP requirements and funds operation and maintenance costs associated with Innovative Technology Deployment with MCSAP funds" and "Innovative Technology Deployment requirements established pursuant to 49 CFR 350.310 and 350.311."

Section 350.213 What must a State CVSP include?

As required by the FAST Act, section 5101(a), creating 49 U.S.C. 31102(c)(2)(O), section 350.213(b)(3) is changed by adding the word "Criminal," clarifying the type of interdiction activities, and changing the paragraph so it no longer covers only the transportation of controlled substances. The changes to paragraph (b)(4) include adding a reference to 49 U.S.C. 31134 and removing a reference to 49 CFR part 365. The paragraph now requires an applicant to certify that it will "cooperate in the enforcement of" financial responsibility requirements.

Section 350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

Pursuant to section 5101(a) of the FAST Act, adding 49 U.S.C. 31102(k), section 350.215(e) is completely revised. It now provides that an adverse decision will result in withdrawing approval of the plan and withholding all MCSAP funding or finding the State in noncompliance and withholding between 5 and 50 percent of the funding over the years of noncompliance. The remainder of the regulation remains unchanged.

Section 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

Section 350.301(a) clarifies that the requirements apply each fiscal year to the “Lead State Agency.” It also clarifies that by “average aggregate expenditure” it means “level of effort.” Paragraph (b) is restated to allow States to exclude expenditures for federally sponsored demonstration and pilot CMV safety programs, strike forces, activities related to border enforcement, and for new entrant safety audits. However the State must exclude State matching funds, as currently required. Paragraph (c) contains language changes to conform to the FAST Act.

To comply with the FAST Act section 5101(a), adding 49 U.S.C. 31102(f), paragraphs (d) and (e) are added and paragraphs (a)-(c) are revised. Paragraph (d) allows States to use certain amounts as part of the State’s maintenance of effort. Paragraph (e) provides that FMCSA may waive or modify the requirements of § 350.301 at the request of the State. Paragraph (e) provides that a State may request, and FMCSA may make, a reasonable adjustment to the level of effort required.

Section 350.303 What are the State and Federal shares of expenses incurred under the MCSAP and High Priority Programs?

The heading of § 350.303 is revised to clarify that this section refers to both the MCSAP and High Priority Program. As required by FAST Act, section 5101(c),

amending 49 U.S.C. 31104(b), new paragraph (a) increases the percent of eligible costs that FMCSA will reimburse from 80 percent to at least 85 percent. It changes the reference to “costs incurred in the administration of an approved CVSP” to “costs incurred under the MCSAP and High Priority Program.” Paragraph (b) makes language changes and also changes the cross reference from 49 CFR part 18, which has been removed, to 2 CFR part 200, the Office of Management and Budget provision dealing with “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” FMCSA adds paragraph (c) to provide that, when “...the amounts are not applied to the maintenance of effort required under § 350.301,” States may use amounts generated under 49 U.S.C. 14504a as part of the State’s match required for MCSAP, as required in the FAST Act section 5101(a) which revised 49 U.S.C. 31102(g).

Section 350.305 Are U.S. Territories subject to the MCSAP matching funds requirement?

Section 350.305, including the heading, is changed by adding references to MCSAP to clarify that this section refers to MCSAP matching funds. The rest of the provision remains unchanged.

Section 350.308 How long are High Priority Program funds available?

As required by the FAST ACT section 5101(c), amending 49 U.S.C. 31104(f), FMCSA adds a new § 350.308 to specify how long High Priority Program funds are available, paralleling existing § 350.307. Paragraph (a) describes how long funds for CMV safety activities will be available. Paragraph (b) states how long funds for Innovative Technology Deployment activities will be available.

Section 350.309 What activities are eligible for reimbursement under the MCSAP?

In § 350.309, existing paragraph (c) becomes paragraph (c)(1), and the language is changed to conform to the FAST Act, section 5101(a), adding 49 U.S.C. 31102(h). In paragraph (c)(1)(ii), the reference to “controlled substance” is replaced with “criminal activity, including the trafficking of human beings.”

FMCSA moves the content of existing paragraph (d) to paragraph (c)(2), and revises it. In paragraph (c)(2)(i), the reference to fiscal year 2003 is removed. In paragraph (c)(2)(ii), the percent of MCSAP Basic funds available for enforcement activities related to non-CMV is raised from 5 percent to 10 percent. FMCSA removes existing paragraph (d).

Section 350.310 What types of activities and projects are eligible for reimbursement under the High Priority Program?

FMCSA adds new § 350.310 to describe the activities and programs eligible for funding under the new High Priority Program, in parallel with § 350.309. New § 350.310 contains some of the information in existing § 350.319, but has been revised and reorganized to reflect the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l). Paragraphs (a) through (e) provide a list of eligible activities. Paragraph (f) makes both Non-Lead State Agencies and Lead State Agencies supporting PRISM eligible for High Priority Program funding. Paragraph (g) states that the conduct of Safety Data Improvement Projects is an eligible activity for some entities and references the requirements for such a project. Paragraph (h) includes the improvement of CMV safety and compliance with regulations on the list of eligible activities. Paragraph (i) authorizes reimbursement for the implementation and maintenance of Innovative Technology Deployment of CMV information systems and networks.

Section 350.311 What specific items are eligible for reimbursement under the

MCSAP and High Priority Program?

FMCSA adds § 350.311(a) to provide that FMCSA shall establish criteria for eligible activities and publish those criteria in accordance with the FAST Act, section 5101(c), amending 49 U.S.C. 31104(e). Existing § 350.311 becomes new § 350.311(b), and language and cross references are changed from 49 CFR part 18, which has been removed, to 2 CFR part 200, the Office of Management and Budget provision dealing with “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

Section 350.313 How are MCSAP funds allocated?

FMCSA completely revises § 350.313 to reflect the new organization of grants under the FAST Act. Because of grant program consolidation under sections 5101(a) and 5101(c) of the FAST Act, MCSAP funds are now only allocated in two ways, so paragraphs (a) (1) and (2), (b) and (c) are deleted. The remaining language is unchanged but renumbered. Paragraph (a) provides that Basic Program Funds are allocated in accordance with § 350.323. Paragraph (b) specifies that Incentive Funds are allocated in accordance with § 350.327.

Section 350.319 [Removed]

Existing § 350.319 is removed consistent with the FAST Act’s revision of the High Priority Program, section 5101(a), adding 49 U.S.C. 31102(l). Some elements of this section are moved to § 350.310.

Section 350.321 [Removed]

Section 350.321 is removed, consistent with section 5101(e) of the FAST Act's removal of New Entrant Funds as a separate grants program and inclusion of them under the general MCSAP funds.

Section 350.323 What criteria are used in the Basic Program Funds allocation?

FMCSA alters paragraph (a) by adding the word "First" to indicate the order in which these procedures occur. As required by the FAST Act, section 5106(d), paragraphs (b)-(d) are added. FMCSA adds a new paragraph (b) to provide that the funding for certain grants awarded to a State will be averaged. New paragraph (c) provides that the total amount of MCSAP Basic funding is the sum of the amounts in paragraphs (a) and (b). In new paragraph (d), FMCSA explains how and why the Agency will adjust the total amount of MCSAP Basic funding. New paragraph (e) includes part of existing paragraph (b), and the language remains unchanged by the FAST Act, but the table has been removed.

Section 350.329 [Removed]

The contents of existing § 350.329 are moved to § 350.203 and revised. Existing § 350.329 is removed.

Section 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRS?

Section 331(a) is clarified and changed to provide that the State must submit copies of any new or amended State law or regulation on CMV safety to FMCSA, as well as review them. Existing paragraph (b) is removed, as it pertains to the review of a State law or regulation. Existing paragraphs (c) and (d) become new paragraphs (b) and (c). New paragraph (b) is changed by revising the introduction to remove the references to the "annual review" and the "annual CVSP," instead referencing just the review and CVSP.

Section 350.335 What are the consequences if a State has laws or regulations incompatible with the Federal regulations?

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(k), in § 350.335, FMCSA combines existing paragraph (a), (b), and (d) into a new paragraph (a) and adds an introductory paragraph. In new paragraphs (a)(1) and (2), FMCSA removes the references to Basic Program Funds and Incentive Funds. In new paragraph (a)(3) the reference to Basic Program is changed to MCSAP Basic Program. Existing paragraph (c) is removed. Existing paragraph (e) becomes new paragraph (b)

VI. RULEMAKING ANALYSES

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). As explained above, this final rule is strictly ministerial in that it incorporates nondiscretionary statutory requirements. These statutory changes went into effect on October 1, 2016. The regulatory changes included in this rule are necessary to make FMCSA's regulations consistent with the FAST Act, and their economic impact will not exceed the \$100 million annual threshold. Any costs associated with this action are attributable to the nondiscretionary statutory provisions. This final rule is not expected to generate substantial congressional or public interest. Therefore, a full regulatory impact analysis has not been conducted, nor has there been a review by the Office of Management and Budget (OMB).

Although a full regulatory evaluation is unnecessary because the level of economic significance does not exceed the \$100 million annual threshold, FMCSA considered the net impact of the FAST Act provisions implemented by this final rule. This rule's provisions provide reimbursements for technology, staffing, enforcement, maintenance, and training activities related to FMCSA regulations and should ease the economic burden on regulated entities. The net impacts of these provisions are expected to be small and affect a small number of individuals and businesses.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the 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, Thomas Liberatore, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA'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 ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

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 \$155 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any 1 year.

Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), nor does it revise any existing approved collections of information.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 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 has determined that this rule would not impose substantial direct costs on 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.

E.O. 12988 (Civil Justice Reform)

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

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules to include an evaluation of the regulation's environmental health and safety effects on children, if the agency has reason to believe the regulation may disproportionately affect children. FMCSA has determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not pose an environmental or safety risk that would disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final 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 takings implications.

Privacy Impact Assessment

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, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII), and the Agency therefore finds that there will be no impact on the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA 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 as a result of this rule. FMCSA has therefore not conducted a privacy impact assessment.

E.O. 12372 (Intergovernmental Review)

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

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

FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a “significant energy action” under that E.O. because it is not economically

significant and is not likely to have an adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13175 (Indian Tribal Governments)

This final 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.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) 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 final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has

no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order.” *Id.* at chapter 1(D). Because Congress required the actions taken in this final rule, leaving the Agency no discretion or responsibility for its effects, this rulemaking is exempt from further analysis.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401, *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action falls within the CAA *de minimis* standards and is not subject to the Environmental Protection Agency’s General Conformity Rule (40 CFR parts 51 and 93).

Additionally, FMCSA evaluated the effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a “disproportionate” and “high and adverse impact” on minority or low-income populations.

List of Subjects for 49 CFR Part 350

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

PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM AND HIGH PRIORITY PROGRAM

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101-31104, 31108, 31136, 31141, 31161, 31310-31311, 31502; and 49 CFR 1.87.

2. The heading for part 350 is revised as set out above.

3. Section 350.101 is revised to read as follows:

§ 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program?

(a) What is the MCSAP? The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of State safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.

(b) What is the High Priority Program? The High Priority Program is a discretionary financial assistance program that supports, enriches, and augments State CMV safety programs through partnerships with 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 planned in accordance with the MCSAP. It also promotes the deployment of innovative technology for the CMV information systems and networks.

4. Amend § 350.103 by revising the introductory text and paragraph (d) to read as follows:

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure that the Federal Motor Carrier Safety Administration (FMCSA), and States, local government agencies, other political jurisdictions, federally recognized Indian tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—

* * * * *

(d) Assessing and improving State-wide performance by setting program goals and meeting performance standards, measures, and benchmarks.

5. Amend § 350.105 by:

- a. Revising the definitions of “10-year average accident rate,” “Accident rate,” “Basic Program Funds,” and “Commercial Vehicle Safety Plan (CVSP);”
- b. Removing the definition of “High Priority Activity Funds;”
- c. Adding definitions for “Innovative Technology Deployment funds,” “Lead State Agency,” “Level of effort,” and “Maintenance of effort” in alphabetical order;
- d. Revising the definition of “Operating Authority;”
- e. Adding a definition for “Plan” in alphabetical order;
- f. Removing the definition of “New Entrant Funds;” and
- g. Adding a definition for “State or States” in alphabetical order.

The revisions and additions read as follows:

§ 350.105 What definitions are used in this part?

10-year average accident rate means for each State, the aggregate number of large truck-involved fatal crashes (as reported in the Fatality Analysis Reporting System (FARS)) for a 10-year period divided by the aggregate vehicle miles traveled (VMT) as defined by the Federal Highway Administration (FHWA) for the same 10-year period.

Accident rate means for each State, the total number of fatal crashes involving large trucks (as measured by the FARS for each State) divided by the total Vehicles Miles Traveled (VMT) as defined by the Federal Highway Administration (FHWA) for each State for all vehicles.

* * * * *

Basic Program Funds means total MCSAP funds less the Administrative Takedown and Incentive Funds.

* * * * *

Commercial vehicle safety plan (CVSP) or the Plan means the document outlining the State's CMV safety objectives, strategies, activities, and performance measures.

Innovative Technology Deployment funds means funds provided to States for carrying out the deployment of innovative technology that support commercial vehicle information systems and networks .

* * * * *

Lead State Agency means the State CMV safety agency designated by the Governor to be responsible for administering the Plan throughout the State.

Level of effort— see Maintenance of effort.

Maintenance of effort means the level of effort Lead State Agencies are required to maintain each fiscal year in accordance with 49 CFR 350.301. Maintenance of effort is also referred to as “maintenance of expenditure” and “level of effort.”

New Entrant Safety Audits means the safety audits of interstate, and, at the State’s discretion, intrastate, new entrant motor carriers under 49 U.S.C. 31144(g) that are required as a condition of MCSAP eligibility under §350.201(z).

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902 and 31144, 49 CFR parts 365 and 368, and § 392.9a.

Plan – see Commercial Vehicle Safety Plan or CVSP.

State or States means all of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

6. Section 350.107 is revised to read as follows:

§ 350.107 What entities are eligible for funding under this part?

(a) For MCSAP, all of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from FMCSA.

(b) For the High Priority Program, the Administrator may make discretionary grants to and enter into cooperative agreements with States, local governments, federally recognized Indian tribes, other political jurisdictions as necessary, and any person to carry out high priority activities and projects that augment motor carrier safety activities

and to States for projects planned in accordance with the Innovative Technology Deployment Program.

7. The heading for § 350.109 is revised to read as follows:

§ 350.109 What are the national Motor Carrier Safety Assistance Program (MCSAP) elements?

* * * * *

8. Add § 350.110 to read as follows:

§ 350.110 What are the national High Priority Program elements?

FMCSA may generally use these funds to support, enrich, or evaluate State CMV safety programs and to accomplish the objectives listed below:

(a) Increase public awareness and education on commercial motor vehicle safety.

(b) Target unsafe driving of commercial motor vehicles and noncommercial motor vehicles in areas identified as high risk crash corridors.

(c) Improve the safe and secure movement of hazardous materials.

(d) Improve safe transportation of goods and persons in foreign commerce.

(e) Demonstrate new technologies to improve commercial motor vehicle safety.

(f) Support participation in performance and registration information systems management developed under 49 U.S.C. 31106—

(1) For entities not responsible for submitting the CVSP under this part, or

(2) For entities responsible for submitting the CVSP under this part—

(i) Before October 1, 2020, to achieve compliance with the requirements of participation; and

(ii) Beginning October 1, 2020, or once compliance is achieved, whichever is sooner, for special initiatives or projects that exceed routine operations required for participation.

(g) Conduct Safety Data improvement Projects –

(1) That complete or exceed the requirements of the program developed to meet § 350.201(r) of this part for entities not responsible for submitting the CVSP under this part; or

(2) That exceed the requirements of the program developed to meet § 350.201(r) of this part for entities that are responsible for submitting the CVSP under this part.

(h) Otherwise improve commercial motor vehicle safety regulations.

9. Revise § 350.201 to read as follows:

§ 350.201 What conditions must a State meet to qualify for MCSAP Funds?

To qualify for MCSAP Funds, each State must:

(a) Assume responsibility for improving motor carrier safety by adopting and enforcing State safety laws and regulations, standards, and orders that are compatible with Federal regulations, the FMCSRs (49 CFR parts 390–397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171–173, 177, 178 and 180), and standards, and orders of the Federal Government, except as may be determined by the Administrator to be inapplicable to a State enforcement program.

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

(c) Designate a Lead State Agency responsible for administering the CVSP

throughout the State.

(d) Give satisfactory assurances that the Lead State Agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations, standards and orders in the CVSP.

(e) Give satisfactory assurances that the State will devote adequate resources to the administration of the CVSP including the enforcement of the FMCSRs, HMRs, or compatible State laws, regulations, standards, and orders throughout the State.

(f) Provide that the total expenditure of amounts of the Lead State Agency responsible for administering the Plan will be maintained at a level of effort each fiscal year in accordance with 49 CFR 350.301.

(g) 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.

(h) Provide that all reports required in the CVSP under this section be available to FMCSA upon request.

(i) Provide that the Lead State Agency adopt the reporting standards and use the forms for recordkeeping, inspections, and investigations that FMCSA prescribes.

(j) Require all registrants of CMVs to demonstrate their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations, standards, and orders.

(k) Grant maximum reciprocity for inspections conducted under the North American Inspection Standards through the use of a nationally accepted system that allows ready identification of previously inspected CMVs.

(l) Ensure that activities described in 49 CFR 350.309, 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.

(m) 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).

(n) Ensure participation in appropriate FMCSA information technology and data systems and other information systems by all appropriate jurisdictions receiving funding under this section.

(o) Ensure information is exchanged with other States in a timely manner.

(p) 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.

(q) Provide satisfactory assurances that the State will address activities in support of the national program elements listed in § 350.109, including the following three activities:

(1) Activities 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.

(2) Activities aimed at providing training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.

(3) Activities 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 part 1308 of title 21, Code of Federal Regulations) by any occupant of a CMV.

(r) 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.

(s)(1) Provide that the State will enforce registration (i.e., operating authority) requirements under 49 U.S.C. 13902 and 31134, and 49 CFR 392.9a by prohibiting the operation of (i.e., placing out of service) any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

(2) Ensure that the State will cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

(t) Ensure consistent, effective, and reasonable sanctions.

(u) Ensure that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

(v) Provide that the State will include in the training manual for the licensing examination to drive a CMV and the training manual for the licensing examination to drive a non-CMV information on best practices for driving safely in the vicinity of non-CMVs and CMVs.

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

(x) 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).

(y) Ensure that it transmits to roadside inspectors the notice of each Federal exemption under 49 U.S.C. 31315(b) and 49 CFR 390.23 and 390.25 provided to the State by FMCSA, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

(z) Except for a territory of the United States, conduct new entrant safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers under 49 U.S.C. 31144(g). The State must verify the quality of the work conducted by a third party authorized to conduct new entrant safety audits under 49 U.S.C. 31144(g) on its behalf and the State remains solely responsible for the management and oversight of the activities.

(aa) Agree to fully participate in performance and registration information systems management under 49 U.S.C. 31106(b) not later than October 1, 2020, by complying with the conditions for participation under paragraph (3) of that section, or demonstrate to the FMCSA an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.

(bb) In the case of a State that shares a land border with another country, conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects or forfeit all funds based on border-related activities.

(cc) Comply with the requirements of the innovative technology deployment program in 49 U.S.C. 31102(1)(3) if the State funds operation and maintenance costs associated with innovative technology deployment with its MCSAP funding.

10. Add § 350.203 to read as follows:

§ 350.203 What conditions must an applicant meet to qualify for High Priority Program Funds?

(a) States must meet the requirements of § 350.201, as applicable.

(b) If applicable, other applicants, as described in § 350.107, must meet the following conditions:

(1) Prepare a proposal in accordance with § 350.213, and coordinate the proposal with the Lead State Agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(2) Prepare a proposal that is responsive to the notice of funding availability.

(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 a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 15 percent of the proposed request.

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

(7) Agree to use the forms and reporting criteria required by the Lead State

Agency and/or the FMCSA to record work activities to be performed under the proposal.

(8) Certify that the local agency will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

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

11. Amend § 350.205 by revising paragraph (a) to read as follows:

§ 350.205 How and when does a State apply for MCSAP funding?

(a) The Lead State Agency must submit the State's CVSP to FMCSA, on or before August 1 of each year.

* * * * *

12. Add § 350.206 to read as follows:

§ 350.206 How and when does one apply for High Priority Program funding?

The FMCSA establishes and publishes application instructions and criteria for eligible activities to be funded with financial assistance agreements under this section in a notice of funding availability which is published at least 30 days before the financial assistance program application period closes.

13. Revise § 350.207 to read as follows:

§ 350.207 What response does a State receive to its CVSP submission?

(a) FMCSA will notify the State, in writing, within 30 days of receipt of the CVSP whether FMCSA—

(1) Approves the CVSP; or

(2) Withholds approval of the CVSP because it does not meet the requirements of this part, or is not adequate to ensure effective enforcement of the FMCSRs and HMRs or compatible State laws and regulations.

(b) If FMCSA withholds approval—

(1) FMCSA will give the State a written explanation of the reasons for withholding approval of the CVSP and allow the State to modify and resubmit the CVSP for approval.

(2) The State will have 30 days from the date of the notice to modify and resubmit the CVSP.

(c) Disapproval of a resubmitted CVSP is final for that fiscal year.

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

14. Add § 350.208 to read as follows:

§ 350.208 What response will the applicant for a High Priority Program receive?

(a) If the grant or cooperative agreement is approved, the applicant will receive a grant agreement to execute.

(b) If the grant or cooperative agreement is denied, the applicant will receive a letter of denial from the Agency.

15. Add § 350.210 to read as follows:

§ 350.210 How does an applicant demonstrate it satisfies the conditions for High Priority Program Funding?

An applicant for a High Priority Program Grant or cooperative agreement should refer to § 350.203. There is no separate certification for this program.

16. Revise § 350.211 to read as follows:

§ 350.211 What is the format of the certification required by § 350.209?

The State's certification must be consistent with the following content:

I (name), (title), on behalf of the State (or Commonwealth) of (State), as requested by the

Administrator as a condition of approval of a grant under the authority of 49 U.S.C. 31102, as amended, do hereby certify as follows:

(a) The State has adopted commercial motor carrier and highway hazardous materials safety regulations, standards and orders that are compatible with the FMCSRs and the HMRs, and the standards and orders of the Federal Government.

(b) The State has designated (name of Lead State Agency) as the Lead State Agency to administer the Commercial Vehicle Safety Plan throughout the State for the grant sought and (names of agencies) to perform defined functions under the CVSP. The Lead State Agency has the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws, regulations, standards, and orders.

(c) The State will obligate the funds or resources necessary to provide a matching share to the Federal assistance provided in the grant to administer the Plan submitted and to enforce the State's commercial motor carrier safety, driver, and hazardous materials laws, regulations, standards, and orders in a manner consistent with the approved Plan.

(d) The laws of the State provide the State's enforcement officials right of entry (or other method a State may use that is adequate to obtain the necessary information) and inspection sufficient to carry out the purposes of the CVSP, as approved, and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Standard Inspection procedure, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.

(e) The State requires that all reports relating to the program be submitted to the appropriate State agency or agencies, and the State will make these reports available, in a

timely manner, to the FMCSA on request.

(f) The State has uniform reporting requirements and uses FMCSA-designated forms for record keeping, inspection, investigations, and other enforcement activities.

(g) The State has in effect a requirement that all registrants of CMVs demonstrate their knowledge of the applicable Federal or State CMV safety laws or regulations.

(h) The State must ensure that the total expenditure of amounts of the Lead State Agency will be maintained at a level of effort each fiscal year in accordance with 49 CFR 350.301.

(i) The State will ensure that MCSAP-funded enforcement of activities under 49 CFR 350.309 will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety.

(j) The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

(k) The State will ensure that violation sanctions imposed and collected by the State are consistent, effective, and reasonable.

(l) The State will:

(1) Establish and dedicate sufficient resources to a program to provide FMCSA with accurate, complete, and timely reporting of motor carrier safety information that includes documenting the effects of the State's CMV safety programs;

(2) Participate in a national motor carrier safety data correction program (DataQs);

(3) Participate in appropriate FMCSA systems including information technology

and data systems and other information systems; and

(4) Ensure information is exchanged in a timely manner with other States.

(m) The State will ensure that the Plan, data collection, and information data systems are coordinated with the State highway safety improvement program under sec. 148(c) of title 23, U.S. Code. The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished) is _____ . (Name)

(n) The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws and regulations as they pertain to CMV safety.

(o) The State will ensure that it has departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

(p) The State will ensure that MCSAP-funded personnel, including sub-grantees, meet the minimum Federal standards set forth in 49 CFR part 385, subpart C, for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspection.

(q) The State will enforce registration (i.e., operating authority) requirements under 49 U.S.C 13902, 31134, and 49 CFR 392.9a by prohibiting the operation of any vehicle discovered to be operating without the required registration or beyond the scope of the motor carrier's registration.

(r) The State will cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

(s) The State will include, in the training manual for the licensing examination to

drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for safe driving in the vicinity of noncommercial and commercial motor vehicles.

(t) The State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

(u) The State will ensure that, except in the case of an imminent or obvious safety hazard, 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 motor carriers may make planned stops (excluding a weigh station).

(v) The State will transmit to roadside inspectors the notice of each Federal exemption under 49 U.S.C. 31315(b) and 49 CFR 390.23 and 390.25 as provided to the State by FMCSA, including the name of the entity granted the exemption and any terms and conditions that apply to the exemption.

(w) Except for a territory of the United States, the State will conduct safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers under 49 U.S.C. 31144(g). The State will verify the quality of the work conducted by a third party authorized to conduct safety audits under 49 U.S.C. 31144(g) on its behalf and the State remains solely responsible for the management and oversight of the activities.

(x) The State fully participates in the performance and registration information systems management under 49 U.S.C. 31106(b) not later than October 1, 2020, or demonstrates to FMCSA an alternative approach for identifying and immobilizing a

motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.

(y) In the case of a State that shares a land border with another country, the State will conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects or it will forfeit all MCSAP funds based on border-related activities.

(z) If a State meets all MCSAP requirements and funds operation and maintenance costs associated with innovative technology deployment with MCSAP funds, the State agrees to comply with the Innovative Technology Deployment requirements established pursuant to 49 CFR 350.310 and 350.311.

Date _____

Signature _____

17. Amend § 350.213 by revising paragraphs (b)(3) and (4) to read as follows:

§ 350.213 What must a State CVSP include?

* * * * *

(b) * * *

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

(4) Activities to enforce registration requirements under 49 U.S.C. 13902 and 31134 and to cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138 and 31139 and 49 CFR part 387.

* * * * *

18. Amend § 350.215 by revising paragraph (e) to read as follows:

§ 350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

* * * * *

(e) Any adverse decision will result in FMCSA—

(1) Withdrawing approval of the Plan and withholding all MCSAP funding; or

(2) Finding the State in noncompliance and withholding—

(i) Up to 5 percent of MCSAP funds during the fiscal year that the 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) Not more than 50 percent of MCSAP funds for the third and any subsequent

full fiscal year of noncompliance.

* * * * *

19. Revise § 350.301 to read as follows:

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) Each fiscal year, the State must maintain the average aggregate expenditure (level of effort) of the Lead State Agency, exclusive of Federal funds and State matching funds, for CMV safety programs eligible for funding under this part at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005.

(b) In determining a State's average level of effort, 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) Shall require the State to exclude Federal funds; and

(4) Shall require the State to exclude State matching funds.

(c) The State must include costs associated with activities performed during the base period by the Lead State Agency that receives funds under this part. It must include only those activities which meet the current requirements for funding eligibility under the grant program.

(d) States may use amounts generated under 49 U.S.C. 14504a as part of the State's maintenance of effort, provided the amounts are not applied to the match required under 49 CFR 350.303.

(e) Waivers and Modifications—Upon the request of a State, FMCSA may waive or modify the requirements of this section for a total of 1 fiscal year per request if FMCSA determines that the waiver or modification is reasonable, based on circumstances described by the State.

20. Revise § 350.303 to read as follows:

§ 350.303 What are the State and Federal shares of expenses incurred under the MCSAP and High Priority Program?

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

(b) In-kind contributions are acceptable in meeting the matching share if they represent eligible costs as established by 2 CFR part 200 or FMCSA policy.

(c) States may use amounts generated under 49 U.S.C. 14504a as part of the

State's match required for MCSAP, provided the amounts are not applied to the maintenance of effort required under § 350.301.

21. Revise § 350.305 to read as follows:

§ 350.305 Are U.S. Territories subject to the MCSAP matching funds requirement?

The Administrator waives the requirement for matching funds under the MCSAP for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

22. Add § 350.308 to read as follows:

§ 350.308 How long are High Priority Program funds available?

(a) Funds for CMV safety activities under 49 CFR 350.310(a)-(h) obligated to an entity will remain available for the rest of the fiscal year in which they were obligated and the next 2 full fiscal years.

(b) Funds for Innovative Technology Deployment activities under 49 CFR 350.310(i) obligated to a State will remain available for the rest of the fiscal year in which they were obligated and the next 4 full fiscal years.

23. Amend § 350.309 by revising paragraph (c) and removing paragraph (d).

The revision reads as follows:

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

* * * * *

(c) The following activities are also eligible for reimbursement when part of the approved Plan

(1) When accompanied by an appropriate North American Standard Inspection and inspection report—

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

(ii) Detection of and enforcement activities taken as a result of criminal activity, including the trafficking of human beings, in a CMV or by any occupant, including the operator of the CMV; and

(2) For 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, if—

(i) The number of motor carrier safety activities, including roadside 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

(ii) The State does not use more than 10 percent of the MCSAP Basic 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.

24. Add § 350.310 to read as follows:

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

The types of activities eligible for reimbursement under the High Priority Program include:

(a) Increasing public awareness and education about CMV safety;

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

(c) Improving the safe and secure movement of hazardous materials;

(d) Improving safe transportation of goods and persons in foreign commerce;

(e) Demonstrating new technologies to improve CMV safety;

(f) Supporting participation in performance and registration information systems management (PRISM) under 49 U.S.C. 31106(b)—

(1) For Non-Lead State Agencies; or

(2) For Lead State Agencies—

(i) Before October 1, 2020, to achieve compliance with the requirements of participation; and

(ii) Beginning on October 1, 2020, or once compliance is achieved, whichever is sooner, for special initiatives or projects that exceed routine operations required for participation;

(g) Conducting safety data improvement projects—

(1) That complete or exceed the requirements under 49 U.S.C. 31102(c)(2)(P) for Non-Lead State Agencies; or

(2) That exceed the requirements under 49 U.S.C. 31102(c)(2)(P) for Lead State Agencies;

(h) Improving CMV safety and compliance with CMV safety regulations; and

(i) Implementing and maintaining the Innovative Technology Deployment of CMV information systems and networks in accordance with 49 U.S.C. 31102(l)(3).

25. Revise § 350.311 to read as follows:

§ 350.311 What specific items are eligible for reimbursement under the MCSAP and High Priority Program?

(a) FMCSA shall establish criteria for eligible activities to be funded and publish those criteria in a notice of funding availability before the MCSAP and High Priority Program application periods.

(b) All reimbursable items must be necessary, reasonable, allocable and allowable under this part and 2 CFR part 200. The eligibility of specific items is subject to review by FMCSA. The following types of expenses are eligible for reimbursement:

(1) Personnel expenses, including recruitment and screening, training, salaries and fringe benefits, and supervision.

(2) Equipment and travel expenses, including per diem, directly related to the enforcement of safety regulations, including vehicles, uniforms, communications equipment, special inspection equipment, vehicle maintenance, fuel, and oil.

(3) Indirect expenses as allowed by 2 CFR part 200.

(4) Expenses related to data acquisition, storage, and analysis that are specifically identifiable as program-related to develop a data base to coordinate resources and improve efficiency, including operation and maintenance costs related to innovative technology deployment.

(5) Clerical and administrative expenses, to the extent necessary and directly attributable to the MCSAP.

(6) Expenses related to the improvement of real property (e.g., installation of lights for the inspection of vehicles at night). Acquisition of real property, land, or buildings are not eligible costs.

26. Revise § 350.313 to read as follows:

§ 350.313 How are MCSAP funds allocated?

After deducting administrative expenses authorized in 49 U.S.C. 31104(c), the MCSAP funds are allocated among States with approved CVSPs in two ways:

- (a) As Basic Program Funds in accordance with § 350.323 of this part,
- (b) As Incentive Funds in accordance with § 350.327 of this part.

§ 350.319 [Removed]

27. Remove § 350.319:

§ 350.321 [Removed]

28. Remove § 350.321

29. Revise § 350.323 to read as follows:

§ 350.323 What criteria are used in the Basic Program Funds allocation?

(a) First, the funds are distributed proportionally to the States using the following four, equally weighted (25 percent), factors.

- (1) 1997 Road miles (all highways) as defined by the FHWA.
- (2) All vehicle miles traveled (VMT) as defined by the FHWA.
- (3) Population—annual census estimates as issued by the U.S. Census Bureau.
- (4) Special fuel consumption (net after reciprocity adjustment) as defined by the

FHWA.

(b) Next, the FMCSA will average the funding awarded to a State, or other equitable amounts, in fiscal years 2013, 2014, and 2015 for—

- (1) Border enforcement grants under 49 U.S.C. 31107; and
- (2) New entrant audit grants under 49 U.S.C. 31144(g)(5).

(c) FMCSA will add the amount in paragraph (a) of this section to the amount in

paragraph (b) of this section to calculate the total amount of MCSAP Basic funding.

(d) Subject to the availability of funding and notwithstanding fluctuations in the data elements used by FMCSA, the initial amounts resulting from the calculation in paragraph (c) of this section shall be adjusted to ensure that, for each State, the amount shall not be less than 97 percent of the average amount of funding received or other equitable amounts in fiscal years 2013, 2014, and 2015 for—

- (1) MCSAP funds under 49 U.S.C. 31102;
- (2) Border enforcement grants under 49 U.S.C. 31107; and
- (3) New entrant audit grants under 49 U.S.C. 31144(g)(5).

(e) Distribution of Basic Program Funds for Puerto Rico and the U.S. territories is subject to allocation as follows:

- (1) U.S. territories receive a fixed amount of \$350,000;
- (2) Puerto Rico receives a maximum allocation of 4.944 percent or a minimum

allocation of 0.44 percent or \$350,000, whichever is greater.

§ 350.329 [Removed]

30. Remove § 350.329:

31. Amend § 350.331 by:

- a. Revising paragraph (a);
- b. Removing paragraph (b);
- c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and
- d. Revising newly redesignated paragraph (b) introductory text.

The revisions read as follows:

§ 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?

(a) States must submit a copy of new or amended State laws or regulations on CMV safety immediately after the enactment or issuance.

(b) A State must conduct a review of its laws and regulations for compatibility and report the results of that review in the CVSP in accordance with § 350.213(l), along with a certification of compliance, no later than August 1 of each year. The report must include the following two items:

* * * * *

32. Revise § 350.335 to read as follows:

§ 350.335 What are the consequences if a State has laws or regulations incompatible with the Federal regulations?

(a) FMCSA may initiate a proceeding to withdraw Plan approval or withhold MCSAP funds in accordance with 49 CFR 320.215 in the following situations:

(1) When a State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs or have the same effect as the FMCSRs and identical to the HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) enacts a law or regulation which results in an incompatible rule;

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

(3) Upon a finding by FMCSA, based upon its own initiative or upon a petition of any person, including any State, that a State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs.

(b) Any decision regarding the compatibility of State law or regulation with the HMRs that requires an interpretation will be referred to the Pipeline and Hazardous Materials Safety Administration of the DOT for such interpretation before proceeding under § 350.215.

Issued under the authority of delegation in 49 CFR 1.87: September 19, 2016

T.F. Scott Darling, III
Administrator

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