

## SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

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

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#### Subpart A—General

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

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

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

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

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

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

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

*Administrator* means the administrator of FMCSA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*FMCSRs* means:

(1) The Federal Motor Carrier Safety Regulations under parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter; and

(2) Applicable standards and orders issued under these provisions.

*HMRs* means:

(1) The Federal Hazardous Materials Regulations under subparts F and G of part 107, and parts 171, 172, 173, 177, 178, and 180 of this title; and

(2) Applicable standards and orders issued under these provisions.

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

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

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

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

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

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

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

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

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

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

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

## Subpart B—MCSAP Administration

### § 350.201 What is MCSAP?

(a) *General.* MCSAP is a Federal formula grant program that provides financial assistance to States to reduce the number and severity of crashes, and resulting injuries and fatalities, involving CMVs and to promote the safe transportation of passengers and hazardous materials. The goal of MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through con-

sistent, uniform, and effective CMV safety programs that include driver or vehicle inspections, traffic enforcement, carrier investigations, new entrant safety audits, border enforcement, safety data improvements, and Performance and Registration Information Systems Management (PRISM).

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

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

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

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

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

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

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

The national MCSAP elements are:

- (a) Driver inspections;
- (b) Vehicle inspections;
- (c) Traffic enforcement;
- (d) Investigations;
- (e) New entrant safety audits;
- (f) CMV safety programs focusing on international commerce in Border States;

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(g) Beginning October 1, 2020, full participation in PRISM or an acceptable alternative as determined by the Administrator;

(h) Accurate, complete, timely, and corrected data;

(i) Public education and awareness; and

(j) Other elements that may be prescribed by the Administrator.

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

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

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

(a) *General.* To qualify for MCSAP funds, a State must:

(1) Designate a Lead State Agency;

(2) Assume responsibility for improving motor carrier safety by adopting and enforcing compatible (as defined in § 350.105 of this part) laws, regulations, standards, and orders on CMV safety, except as may be determined by the Administrator to be inapplicable to a State enforcement program;

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

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

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

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

(7) Provide satisfactory assurances that the State will undertake efforts

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that will emphasize and improve enforcement of State and local traffic laws and regulations on CMV safety;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) Ensure that the State will cooperate in the enforcement of hazardous materials safety permits issued under subpart E of part 385 of this subchapter by verifying possession of the permit when required while conducting vehicle inspections and investigations, as applicable; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Activities to enforce registration requirements and to cooperate in the enforcement of financial responsibility

requirements under §392.9a and part 387 of this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Approves the CVSP; or
- (ii) Withholds approval because the CVSP:

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

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

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

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

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

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

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

- (i) Approves the annual update; or
- (ii) Withholds approval because the annual update:

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

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

(2) If FMCSA withholds approval of the annual update, FMCSA will give

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the Lead State Agency a written explanation of the reasons for withholding approval and allow the Lead State Agency to modify and resubmit the annual update for approval.

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

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

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

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

### § 350.217 How are MCSAP funds allocated?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Allocations made under this paragraph are in addition to allocations

made under paragraph (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

(5) Each State's percentage will be multiplied by the total MCSAP funds

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available under this paragraph to determine the dollar amount of the State's allocation.

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

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

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

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

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

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

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

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

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

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ing, or as otherwise determined by the Administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The level of expenditure in fiscal year 2021, as adjusted under section 5107 of the Fixing America's Surface

Transportation (FAST) Act (Pub. L. 114-94, 129 Stat. 1312, 1532-34 (2015)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Activities that support the national program elements listed in § 350.203; and

(2) Sanitary food transportation inspections performed under 49 U.S.C. 5701.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Annual State compatibility review.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Waiver of determination.* (1) A State or any person may petition the Administrator for a waiver of a decision by the Administrator that a State

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law, regulation, standard, or order on CMV safety is not compatible and may not be enforced.

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

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

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

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

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

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

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

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

(c) *Non-permissible exemption—Distance.* (1) Subject to paragraph (c)(2) of this section, State laws and regulations applicable to intrastate commerce must not include exemptions

based on the distance a motor carrier or driver operates from the work reporting location.

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

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

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

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

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

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

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

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

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

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

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of § 391.41 of this subchapter if the variances are based on sound medical judgment combined with appropriate performance standards ensuring no adverse effect on safety.

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

and qualified to apply such physical qualification standards or variances.

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

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

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

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

- (a) The type and scope of the industry exemption request, including the percentage of the industry it affects, number of vehicles, mileage traveled, and number of companies it involves;
- (b) The type and scope of the requirement to which the exemption would apply;
- (c) The safety performance of that specific industry (*e.g.*, crash frequency, rates, and comparative figures);
- (d) Inspection information (*e.g.*, number of violations per inspection, and driver and vehicle out-of-service information);
- (e) Other CMV safety regulations enforced by other State agencies not participating in MCSAP;
- (f) The commodity the industry transports (*e.g.*, livestock or grain);
- (g) Similar exemptions granted and the circumstances under which they were granted;
- (h) The justification for the exemption; and
- (i) Any identifiable effects on safety.

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

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

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

- (1) A State enacts a law, regulation, standard, or order on CMV safety that is not compatible;
- (2) A State fails to adopt a new or amended FMCSR or HMR within 3 years of its effective date; or
- (3) FMCSA finds, based on its own initiative or on a petition of a State or any person, that a State law, regulation, standard, order, or enforcement practice on CMV safety, in either interstate or intrastate commerce, is not compatible.

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

**Subpart D—High Priority Program**

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

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

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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-CMV in areas identified as high-risk crash corridors;
- (b) Improve the safe and secure movement of hazardous materials;
- (c) Improve safe transportation of goods and passengers in foreign commerce;
- (d) Demonstrate new technologies to improve CMV safety;
- (e) Support participation in PRISM by Lead State Agencies:
  - (1) Before October 1, 2020, to achieve full participation in PRISM; and
  - (2) Beginning on October 1, 2020, or once full participation in PRISM is achieved, whichever is sooner, to conduct special initiatives or projects that exceed routine operations for participation;
- (f) Support participation in PRISM by entities other than Lead State Agencies;
- (g) Support safety data improvement projects conducted by:
  - (1) Lead State Agencies for projects that exceed MCSAP safety data requirements; or
  - (2) Entities other than Lead State Agencies for projects that meet or exceed MCSAP safety data requirements;
- (h) Advance the technological capability and promote the Innovative Technology Deployment of intelligent transportation system applications for CMV operations by States;
  - (i) Increase public awareness and education on CMV safety; or
  - (j) Otherwise improve CMV safety.

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

(a) *Motor carrier safety activities.* To qualify for High Priority Program funds related to motor carrier safety

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activities under § 350.403 paragraphs (a) through (g), (i), and (j):

- (1) States must:
  - (i) Participate in MCSAP under subpart B of this part; and
  - (ii) Prepare a proposal that is responsive to the High Priority Program Notice of Funding Opportunity (NOFO).
- (2) Applicants other than States must, to the extent applicable:
  - (i) Prepare a proposal that is responsive to the NOFO;
  - (ii) Except for Federally-recognized Indian Tribes, coordinate the proposal with the Lead State Agency to ensure the proposal is consistent with State and national CMV safety program priorities;
  - (iii) Certify that the applicant has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal;
  - (iv) Designate an individual who will be responsible for implementing, reporting, and administering the approved proposal and who will be the primary contact for the project;
  - (v) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant or cooperative agreement;
  - (vi) Agree to use the forms and reporting criteria required by the Lead State Agency or FMCSA to record work activities to be performed under the proposal;
  - (vii) Certify that a political jurisdiction will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State; and
  - (viii) Certify participation in national databases appropriate to the project.
- (b) *Innovative Technology Deployment activities.* To qualify for High Priority Program funds for Innovative Technology Deployment activities under § 350.403(h), States must:
  - (1) Prepare a proposal that is responsive to the NOFO;
  - (2) Have a CMV information systems and networks program plan approved by the Administrator that describes the various systems and networks at the State level that need to be refined,

revised, upgraded, or built to accomplish deployment of CMV information systems and networks capabilities;

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

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

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

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

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

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

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

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

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

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

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

(b) *Innovative Technology Deployment activities.* High Priority Program funds

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

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

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

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

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

(1) As announced in the NOFO; or

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

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

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

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

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

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

(1) Acquisition of real property or buildings; or

(2) Development, implementation, or maintenance of a State registry of medical examiners.

**PART 355 [RESERVED]**