

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the Upper Guadalupe River Authority, 125 Lehmann Drive, Kerrville, Texas.
 Send comments to The Honorable Bob Denson, Judge, Kerr County, 700 Main Street, Kerrville, Texas 78028.
 Send comments to The Honorable Jean Raymer, Mayor, City of Ingram, 214 Highway 39, Ingram, Texas 78025.
 Maps are available for inspection at City of Kerrville, 800 Junction Highway, Kerrville, Texas.
 Send comments to The Honorable Charles Johnson, Mayor, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028.

Washington	Clallam County (Unincorporated Areas).	Elwha River	Approximately 3,250 feet above mouth	*14	*14
			Approximately 3,800 feet above mouth	*15	*16
			Approximately 5,500 feet above mouth	*20	*24
			Approximately 8,000 feet above mouth	*35	*35

Maps are available for inspection at the Clallam County Planning Department, 223 East Fourth Street, Port Angeles, Washington.
 Send comments to The Honorable Carole Boardman, Chairperson, Clallam County Board of Commissioners, 223 East Fourth Street, Port Angeles, Washington 98362.

Washington	Lower Elwha Indian Reservation Clallam County.	Elwha River	Approximately 650 feet above mouth	None	*7
			Approximately 7,550 feet above mouth	*33	*34

Maps are available for inspection at the Tribal Center, 2851 Lower Elwha Road, Port Angeles, Washington.
 Send comments to The Honorable Russ Hepfer, Tribal Chairperson, 2851 Lower Elwha Road, Lower Elwha Tribe, Washington 98363.

¹Stringtown Road is located in Warren County (Unincorporated Areas), Missouri.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 350

[FHWA Docket No. FHWA-98-4878]

RIN 2125-AE46

Motor Carrier Safety Assistance Program (MCSAP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the regulations governing the Motor Carrier Safety Assistance Program (MCSAP) by incorporating provisions of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (1998). This action would broaden the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility

for improving motor carrier safety. Proposed amendments would require States to develop performance-based plans reflecting national priorities and performance goals, revise the MCSAP funding distribution formula, and create a new incentive funding program. The effect of this action would be to implement the performance-based program requirements of TEA-21 and provide States greater flexibility in designing programs to address national and State goals for reducing the number and severity of commercial motor vehicle (CMV) crashes. Many of these revisions have a congressionally mandated deadline of FY 2000 (October 1, 1999).

DATES: Comments to this NPRM should be received no later than May 10, 1999. Late comments will be considered to the extent practicable.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. If you desire notification of receipt of comments,

include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Motor Carrier Safety & Technology, (202) 366-9579, or Mr. Charles Medalen, Office of the Chief Counsel (HCC-20), (202) 366-1354, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

You may download an electronic copy of this document using a personal computer, modem, and suitable communications software from the U.S. Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register** home page at URL: <http://www.nara.gov/fedreg> and from the U.S. Government Printing Office databases at URL: <http://www.access.gpo.gov/nara>.

Background

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant-in-aid program. It is an outgrowth of a very successful pilot program implemented in a few States in 1980 to reduce truck and bus crash involvement by combining uniform safety inspections with size and weight enforcement activities. The character of the program has evolved from a pilot program to a mature and effective commercial motor vehicle (CMV) safety program with participation by all eligible jurisdictions. The MCSAP was first authorized in the Surface Transportation Assistance Act of 1982 (STAA) (secs. 401-404, Pub. L. 97-424, 96 Stat. 2097, 2154) and reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (sec. 12014, Pub. L. 99-570, 100 Stat. 3207, 3207-186) and again in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (secs. 4001-4004, Pub. L. 102-240, 105 Stat. 1914). The original authorization contained certain eligibility requirements for financial assistance, including agreement to adopt and enforce safety regulations compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The regulatory compatibility requirement remains today and ensures a permanent and consistent enforcement and safety presence throughout the nation.

The Motor Carrier Safety Act of 1984 (Title II of Pub. L. 98-554, 98 Stat. 2832, 2838) created the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to analyze State CMV safety requirements and develop recommendations on how to achieve compatibility with the Federal regulations. The Safety Panel recommended, in part, that the FHWA establish procedures for the continual review and analysis of the compatibility of State safety laws and regulations with Federal requirements through the MCSAP. Consistent with these recommendations, the FHWA incorporated an annual review process as a MCSAP eligibility criterion. Sec. 208 of the 1984 Act also authorized the Secretary to preempt those State laws and regulations affecting interstate CMV safety found to be inconsistent with Federal laws and regulations. Such a finding would have the effect of rendering inconsistent State laws and regulations unenforceable.

The MCSAP implementing regulations, published in 1984, included two types of grants. Small fixed-amount development grants were available to assist all States in achieving minimum

program conditions. Implementation grants, based upon an allocation formula, were available to those States meeting the funding conditions for reimbursement of the Federal share (80 percent) of the cost of eligible enforcement activities. The grant agreement was based on an approved State Enforcement Plan (SEP) detailing activities proposed for the succeeding fiscal year.

The ISTEA reauthorized the MCSAP through FY 1997 and expanded the scope of the program to include CMV safety initiatives beyond the traditional inspection activities (e.g., hazardous materials training, adoption and reporting of uniform truck and bus crash data elements, commercial driver license (CDL) enforcement, and traffic enforcement activities).

The ISTEA also allowed for in-kind contributions by States to be counted toward their matching shares, increased the availability of allocated funds for expenditure by the State to the year of allocation plus one year, and specifically authorized discretionary reallocation of unobligated funds. The regulations implementing ISTEA sought to improve program effectiveness and transform the MCSAP into a more performance-based program by encouraging innovation and initiative by participating States. The regulations established special funding categories rewarding those States designing comprehensive programs for select activities and using their State CMV safety data in identifying critical needs and then developing and implementing specific safety performance outcomes, such as reduced crash rates.

New Legislation

The TEA-21 was signed into law on June 9, 1998. Sec. 4003 of TEA-21 authorizes the MCSAP at the following funding levels from FY 1998 through FY 2003: \$79 million for FY 1998, \$90 million for FY 1999, \$95 million for FY 2000, \$100 million for FY 2001, \$105 million for FY 2002, and \$110 million for FY 2003.

Section 4002 of the TEA-21 adds a new section 31100 to title 49 of the U.S. Code which describes the purpose of the grant program. The goals and directives outlined in that section closely parallel the concepts and principles of a performance-based program. These changes are intended to foster greater coordination and cooperation between State and Federal jurisdictions in improving CMV safety. The changes would also give States more flexibility to address their particular safety issues through the MCSAP. Section 4002 of the TEA-21 also states current program

goals of (1) investing in activities achieving maximum crash reductions, (2) assessing and improving statewide program performance by setting program outcome goals, improving information and analysis systems, and monitoring program effectiveness, (3) ensuring adequate training of enforcement personnel, and (4) advancing promising technologies and safe operating procedures.

Section 4003 of the TEA-21 expands the definition of "commercial motor vehicle" to include vehicles with a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) of at least 10,001 pounds. This amendment will simplify enforcement in cases where a vehicle with a GVW of more than 10,001 pounds does not have a corresponding manufacturer's GVWR plate or is being operated in excess of the manufacturer's GVWR. It also revises the hazardous materials portion of the definition of "commercial motor vehicle" in 49 U.S.C. 31101 to make it consistent with the "commercial motor vehicle" definition in 49 U.S.C. 31132.

A key provision of TEA-21 is the section 4003 requirement that MCSAP participating States implement performance-based CMV safety programs by FY 2000. This provision shifts the emphasis of State programs from measuring activity levels or inputs, (e.g., the number of vehicles inspected) to focusing program effort on outcomes (e.g., reductions in CMV crashes, fatalities, and injuries). States have reacted very positively to this change and all participating MCSAP jurisdictions have implemented performance-based programs.

Section 4003 also revises the grant eligibility criteria and the State plan format to require references to "improving" CMV safety and "hazardous materials" enforcement. This proposed amendment emphasizes that the principal goal of the MCSAP is being expanded beyond simply enforcing regulations to that of encouraging States to assume the responsibility for finding ways to actively improve CMV safety. It also reinforces the concept that it is equally important to adopt and enforce both the FMCSRs and the HMRs. Additional proposed revisions include (1) establishing programs ensuring proper and timely correction of safety violations noted during roadside inspections, and (2) ensuring that roadside inspections are conducted at locations that will adequately protect the safety of both drivers and enforcement personnel. These provisions would codify and reinforce

longstanding best practices of State CMV safety programs.

The legislation expands existing requirements that State agencies coordinate the Commercial Vehicle Safety Plans (CVSP), originally called the State Enforcement Plan, with the State Highway Safety Plans under 23 U.S.C. 402. The TEA-21 mandates States participating in MCSAP to coordinate the CVSP and data collection and information systems with the State agency administering highway safety programs under title 23, U.S.C. The January 1, 1994, deadline for SAFETYNET participation would be deleted from the regulations since all States have met the requirement. Each jurisdiction receiving MCSAP funding is required to participate in SAFETYNET and other information systems. There is also a new requirement for States to exchange information in a timely manner. These revisions would encourage States and agencies within a State to share best practices and develop broader-based safety programs.

Section 4003(f) of TEA-21 removes the current funding set-asides for research and development, traffic enforcement, hazardous materials training, public awareness, and demonstration of technologies and methodologies. These set-asides were created to encourage uniform State implementation of significant national programs but limited States' flexibility in allocating their MCSAP resources. They are being replaced by new allocation criteria allowing the administrative flexibility needed for States to design programs targeting their unique safety problems as well as meeting national priorities. The new funding allocation allows up to 5 percent of MCSAP funds to be designated for States, local governments and other persons using and training qualified personnel for high priority activities and programs that improve CMV safety and compliance with safety regulations. Up to 5 percent of MCSAP funds will also be available to States, local governments, and other persons using and training qualified personnel to carry out border CMV safety programs, enforcement activities, and

projects. The Secretary may also reimburse State agencies, local governments, or other persons up to 100 percent for public education activities relating to border or high priority activities, programs, and projects.

The overall MCSAP would consist of four parts:

1. *Basic Program Funds* emphasizing uniform roadside driver and CMV safety inspections, data collection and reporting, traffic enforcement, drug and alcohol enforcement, educational activities, compliance reviews, and current complementary activities. These funds would include a performance factor that redistributes some Basic Program Funds to States that achieve improved CMV crash performance.

2. *Incentive Funds* that encourage States to improve CMV crash performance and to meet other safety performance criteria.

3. *High Priority and Border Activity Funds*.

4. *Administrative set-aside* of 1.25 percent to cover program administration and State personnel training costs.

The Proposal

The purpose of this proposal is to (1) improve the effectiveness of the MCSAP by implementing performance-based, results-oriented programs, (2) implement TEA-21 revisions to the MCSAP, (3) provide an improved grant distribution scheme which supports and enhances the performance-based concept and rewards States for their safety program improvements, (4) rewrite the MCSAP regulations to be consistent with our zero-base efforts to eliminate redundancy and clarify requirements, (5) define key terms such as "performance-based program," "Basic Program Funds," "Incentive Funds," "national program elements," "traffic enforcement" as it pertains to the MCSAP, and (6) make other conforming amendments reflecting changes in the law and new program direction.

Format Changes to the MCSAP Regulations

In 1992, the FHWA initiated a complete review of the FMCSRs, a

process known as a zero-base initiative, to revise and reformat the regulations.

The majority of these revised regulations will be published as a separate NPRM in the near future. Because of the importance of the MCSAP grant program to State CMV safety enforcement efforts, these revised regulations are being separately proposed at this time. Consistent with this effort, the existing Appendix A—Guidelines To Be Used in Preparing State Enforcement Plan, Appendix B—Form of State Certification, and Appendix C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations, would be eliminated and the pertinent information would be incorporated into the corresponding sections of the new, proposed regulatory text.

The FHWA has made a special effort to ensure that the language used in this proposal is logically presented, clearly formatted, and easily understood. The following three techniques have been used:

1. *Question and Answer Format*: The FHWA constructed the proposed rules so that each section heading asks a question, and the answer to the question becomes the regulatory requirement.

2. *The Active Voice*: A sentence constructed using the active voice is usually easier to understand than one using the passive voice.

3. *"Plain English"*: On October 4, 1993, the President issued Executive Order 12866, stating "all information provided to the public by the agency shall be in plain, understandable language." (Section 6(a)(3)(f)). This proposal uses basic English and simple sentence structure. We have minimized the use of complex, technical, and legal terms as much as possible and adopted a more conversational writing style.

Consolidation of Appendices

The proposal incorporates into the rule text what is currently set apart in Appendices A, B, and C.

The following table shows where each section of the current regulations would appear in the new format:

PART 350.—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Current regulation	Proposed regulation
350.1—Purpose	350.103
350.3—Definitions	350.105
350.5—Policy	350.101
350.7—Objective	350.101
350.9—Conditions for basic grant approval	350.107, 350.201
350.11—Adopting and enforcing compatible laws and regulations (generally):	
350.11(a)	350.201(a)

PART 350.—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM—Continued

Current regulation	Proposed regulation
350.11(b)	350.331(c)
350.11(c)	Removed.
350.11(d)	350.105 (compatible/compatibility)
350.11(e)	350.203
350.11(f)	350.331(d)
350.11(g)	350.173
350.11(h)	350.335(a)
350.11(i)	350.335(b)
350.13—State Enforcement Plan (SEP) for a basic grant	350.213
350.15—Certification of compliance by State	350.209
350.17—Maintenance of effort	350.301
350.19—Grant application submission	350.205
350.21—Distribution of funds:	
350.21(a)	350.303
350.21(b)	350.305
350.21(c)	350.323(a)
350.21(d)	350.323(b)
350.21(e)–(f)	350.313, 350.315, 350.317, 350.319, 350.321, 350.323, 350.325, 350.327, 350.329
350.21(g)	350.307
350.23—Acceptance of State plan	350.205, 350.207
350.25—Effect of failure to submit a satisfactory State plan	350.205, 350.207
350.27—Procedure for withdrawal of approval	350.215
350.29—Eligible costs	350.311, 350.315
350 App A—Guidelines To Be Used in Preparing State Enforcement Plan.	350.213 The SEP has been renamed the Commercial Vehicle Safety Plan (CVSP).
350 App B—Form of State Certification	350.211
350 App C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations:	
paragraph 1	Removed.
paragraph (2)(a)	350.337
paragraph (2)(b)	350.337
paragraph (3)(a)	Removed.
paragraph (3)(b)	350.341(a)
paragraph (3)(c)	350.341(b)
paragraph (3)(d)	350.341(c)
paragraphs (3)(d)(1)–(d)(11)	350.343
paragraph (3)(e)	350.341(d)
paragraph (3)(f)	350.341(e)
paragraph (3)(g)	350.341(f)
paragraph (3)(h)	350.341(g)
paragraph (3)(i)	350.341(h)
paragraph (3)(j)	350.203

Substantive Program Changes to the MCSAP Regulations

This section introduces new and revised terms for the MCSAP program and discusses proposed changes affecting the character of the MCSAP program.

Definitions

Removals: The term “basic allocation” would be removed and replaced by either the term “Basic Program Funds” or “Incentive Funds.” The term “basic grant” would be removed and replaced by the term “Basic Program Funds.”

Additions: Five new terms are proposed and would be defined under § 350.105: “Basic Program Funds,” “Border Activity Funds,” “High Priority Activity Funds,” “Incentive Funds,” “North American Standard Inspection,” and “Performance Factor.”

Revisions: Three terms would be revised. The term “commercial motor vehicle” (CMV) would be broadened to include vehicles with a gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of at least 10,001 pounds. The definition would also include CMVs hauling placardable amounts of hazardous materials as described in the HMRs (49 CFR part 172, subpart F). This proposal would match the hazardous materials portion of the definition of a CMV found in 49 U.S.C. 31132.

The term “compatible/compatibility” would reflect new regulations of the Research and Special Programs Administration requiring transporters of hazardous materials to comply with the HMRs for both interstate and intrastate operation.

MCSAP Changes

With the enactment of TEA–21, the Congress has endorsed and promoted the performance-based approach to MCSAP by all but eliminating activity-specific funding set-asides from previous legislation. The TEA–21 creates two new funding categories within the MCSAP:

High Priority Activities and Projects

The proposed rule would define this category as national program activities designed to improve CMV safety and compliance with CMV safety regulations, including public awareness efforts, education, and technology demonstration. The Secretary may designate up to 5 percent of available MCSAP funds each year for this purpose.

The proposed high priority funding allocation would allow the FHWA to continue funding uniform national

emphasis area programs while allowing States to allocate formula funds to address their own most pressing safety problems. The TEA-21 ensures that high priority funds can be awarded to States, local governments, and other persons that use and train qualified officers and employees in coordination with State CMV safety agencies, through grants, contracts, and cooperative agreements. Should High Priority Activity Funds be available in a given fiscal year, the FHWA will solicit grant proposals from the States.

Border Commercial Motor Vehicle Safety and Enforcement Programs

The new legislation establishes funding for border activities to provide national resources to assist States along the nation's borders with the added safety responsibilities they face with the full implementation of the NAFTA. The Secretary may designate up to 5 percent of available amounts for the MCSAP allocation in a fiscal year for States, local governments, and other persons for carrying out CMV safety programs and enforcement activities and projects at the borders of the United States. These amounts would be allocated to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State CMV safety agencies.

Commercial Vehicle Safety Plan (CVSP)

The FHWA proposes to change the requirements relating to what a State would include in the CVSP in order to reflect a performance-based program. The TEA-21 eliminates the current statutory requirement that States enact an out-of-service (OOS) verification program. Instead, States would be required, as part of the CVSP, to certify that they have a process in place for timely and proper correction of all CMV safety violations noted during inspections. States would also be required to ensure that all inspections are conducted in locations that adequately protect the safety of both drivers and enforcement personnel. The new CVSP format would incorporate these provisions into the CVSP Certification. States would be required to expand their current practice of coordinating the State CVSP with the Highway Safety Plan developed under 23 U.S.C. 402. The TEA-21 requires that States coordinate their plan, data collection, and information systems with State highway safety programs under title 23, U.S.C. The FHWA strongly encourages State MCSAP agencies to take a leadership role in coordinating planning, data collection,

and information systems with State highway safety programs under title 23. The guidelines for preparing the CVSP would be removed from appendix A to Part 350 and incorporated into the regulatory text of § 350.213.

Adoption and Implementation of Performance-Based Programs

The TEA-21 also requires that all States adopt and implement a performance-based MCSAP by the year 2000. This mandate has already been achieved because participating States began developing performance-based, results-oriented programs and CVSPs in FY 1998. The FHWA recognizes and emphasizes that adopting a performance-based grant program is an evolutionary process requiring continual improvement and enhancement.

States have always been required to include an evaluation of their program in the annual safety plan. For the most part, success was measured by the number of activities conducted rather than outcomes achieved. Even though these evaluations helped States identify program improvements, a results-oriented program would better enable States to identify problems and develop effective solutions. Adopting a performance-based program gives the added benefit of allowing a State to better support program decisions and more accurately measure the effectiveness of individual activities and the overall program.

The following is a discussion of key sections proposed for the CVSP:

State Agency Goal or Mission—This section would contain a brief statement describing the mission of the MCSAP lead agency.

Program Evaluation—This section would contain a comprehensive evaluation of the effectiveness of prior years' program activities as defined by the State. The evaluation period should be at least 2 years and could be up to 5-10 years. States would describe the methodology and results of the evaluation. States would comprehensively discuss progress toward individual performance objectives listed under the "Objectives" section of the previous years' CVSP and identify any safety or performance problems discovered. States would identify those problems in the new or modified CVSP. The discussion would set forth the original problem, the intended objectives (activities and strategies), performance measures achieved, recommended modifications to the CVSP, if any, and the actual final outcome. States may carry over objectives from one year to the next.

However, modified or new objectives would have to be discussed in the new or modified CVSP and approved before implementation. The State would need to identify the specific period defined in its evaluation discussion (e.g., 2 years, 5 years, etc.).

The issue of what period of time must or should be covered by States in a program evaluation has created confusion for many years. In order to assess progress in achieving safety goals, States must have a process to measure the impact of their program efforts. In past years, many States have indicated that they could not provide evaluation data for the previous fiscal year's program activities in the current year CVSP. States indicated this could not be done either because program activities were still underway or that program data had not yet been fully collected, processed, or evaluated. This led to CVSPs containing limited evaluation data.

What the agency proposes with this rule is for States to provide trend data in their CVSP as a means of evaluating program progress made to date. Ideally, these evaluations would include a breakdown of impact by fiscal or calendar year. In the absence of available data for the year immediately preceding the current CVSP, the agency requests that the States include trend analysis for the program area in question using the most current data available.

National Program Elements—Each CVSP would address, in a performance-based manner, the national elements described in § 350.109: (a) driver/vehicle inspections, (b) traffic enforcement, (c) compliance reviews, (d) public education and awareness, and (e) data collection and upload. Even if a State plans no activities for a given element, it would be required to explain the basis for that resource allocation.

Problem Statement—This would be a brief, yet definitive, statement for each identified safety or performance problem to be addressed in the plan. The statement would be supported by data or other information. States would provide specific detail about what is contributing to or causing the problem (if known), or whether further research is needed to identify these factors. A hypothetical problem statement follows: "The 1997 Inspection System Report indicates that 30 percent of inspection reports for the State were rejected. We have determined that the error rate was caused because inspectors improperly recorded U.S. DOT identification numbers, resulting in an inability to match the inspection with a known carrier (non-match)."

Performance Objectives—This section would clearly tie the objectives of the plan to the problems identified. Each objective would clearly state, in measurable terms, what the plan intends to accomplish. Objectives would be realistic and have an adequate time frame for achievement. Here is an example of a performance objective for the hypothetical problem statement above: “Decrease the non-match rate for the State inspection reports to 20 percent or less in FY 99.”

Strategy—This section would describe the general, measurable method(s) to be used to accomplish each objective. Here is an example of a strategy for the hypothetical performance objective above: “Improve inspectors’ knowledge of proper carrier identification and recording procedures.”

Activity—States would specify how they intend to use resources to implement the strategy identified above. Here are three sample activities for the hypothetical strategy above: (1) Send 30 inspectors to the “Inspection Recording Techniques” training class conducted by the National Training Center by 9/30/99, (2) Use laptop and OMC inspection software, (3) Provide “supervised” inspection activities (on-the-job training), and (4) Provide all inspectors with training in carrier identification techniques.

Performance Measures—This section would list quantitative guides used to rate the progress and effectiveness of the program. These guides would be listed for individual elements of the CVSP or the overall plan. This information would be used for on-going program monitoring and the annual evaluation. An example of a performance measure is “Thirty inspectors complete Inspection Recording Techniques training by 9/30/99.”

Performance Monitoring—This section would discuss the method the State would use to monitor how effectively the CVSP is being implemented. The State would clearly designate (1) who will monitor the CVSP, (2) how frequently the plan will be monitored, (3) to whom reports would be submitted, and (4) how reports will be submitted. The information derived from this process would demonstrate the State’s progress toward achieving its objectives, provide

a tool for improving the plan, and provide interim data for evaluation.

Resources—States would provide a comprehensive description of all resources required to accomplish proposed objectives. Resources would be consistent with eligible expenses under § 350.311, including personnel, equipment, materials and supplies, information systems, and contractual services needed to accomplish those objectives. States would describe resources and estimate the total dollar expense. States are encouraged to be creative and consider joint ventures with other States as well as using existing Federal government, university, and commercial resources.

Additional Activities—This section would indicate, in a performance-based manner, planned enforcement activities in which the State is involved (e.g., vehicle size and weight, alcohol/controlled substance checks, drug interdiction).

Local Jurisdictions

This NPRM provides a process for making High Priority and Border Activity Funds available to local jurisdictions as well as lead MCSAP State agencies. This provision could enhance MCSAP effectiveness by providing additional enforcement and safety resources in every State. The FHWA has long considered local agency participation to be critical in improving enforcement/compliance activities and building a uniform enforcement presence throughout the nation. This proposed provision is not intended to enable local agencies to circumvent lead agency authority. The FHWA would require local agencies to coordinate activities with the lead State MCSAP agency, to the extent practicable, in order to ensure national and State program uniformity and sharing of best practices. The FHWA would provide grants directly to local agencies only in cases where it is not possible to work through the lead MCSAP agency. It is critical that inspections and other compliance or enforcement activities be conducted uniformly. Therefore, we would require local agencies and MCSAP agencies to coordinate development of the CVSP and implementation of program activities. The basic conditions being proposed for

local agencies to qualify for these funds are consistent with the conditions established for the State’s MCSAP agency.

Improved Allocation Formula and Processes

The same five formula factors, updated yearly, have been used to allocate Basic Program Funds since the beginning of the MCSAP in 1984. The national motor carrier safety program is being restructured to focus on strategic safety investments, increased flexibility for grantees, updated information systems and analysis, and improved driver programs. The Basic Program Funds allocation formula is used to determine the amount of funds the States participating in the MCSAP are eligible to receive. While the reauthorization of the program was pending, the FHWA reexamined the formula to explore possible changes to the factors to reflect and support a performance-based approach.

During the reauthorization process, the Congress supported the use of performance as a criterion for allocating MCSAP funds. The FHWA, therefore, proposes to link some portion of this formula funding to safety performance. To minimize program disruption in the States, the FHWA recommends a gradual transition from allocating essentially all MCSAP funds based upon formula factors to allocating a portion of MCSAP funds to States based upon their CMV safety performance. For example, after deducting the high priority, border, and administrative takedown funds, in the year 2000, 90 percent of the remaining appropriated funds will be allocated as Basic Program Funds according to the formula. The remaining 10 percent of the funds available for allocation will be placed in an incentive account from which States will receive additional funds based on safety improvements. In the year 2001, to encourage continued improved safety performance, the split is proposed at 85 percent for the Basic Program Funds and 15 percent for the Incentive Funds. In the year 2002, the split is proposed at 80 percent and 20 percent. In 2003, the split is proposed at 75 percent and 25 percent. The following chart sets forth the proposed allocation of MCSAP funds for a 4-year period.

PROPOSED MCSAP FUNDS DISTRIBUTION

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Total MCSAP Funds	\$95,000,000	.....	\$100,000,000	.....	\$105,000,000	.....	\$110,000,000	.....
Administrative Takedown	1,187,500	.....	1,250,000	.....	1,312,500	.....	1,375,000	.....
High Priority Activities	4,750,000	.....	5,000,000	.....	5,250,000	.....	5,500,000	.....
Border Activities	4,750,000	.....	5,000,000	.....	5,250,000	.....	5,500,000	.....

PROPOSED MCSAP FUNDS DISTRIBUTION—Continued

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Basic Program Funds	75,881,250	90	75,437,500	85	74,550,000	80	73,218,750	75
Incentive Funds	8,431,250	10	13,312,500	15	18,637,500	20	24,406,250	25

Incentive Funds would be used to reward those States achieving improved safety performance or that meet specified safety performance criteria.

The MCSAP Formula Workgroup

In 1997, the FHWA convened a MCSAP Formula Workgroup. The Workgroup was comprised of OMC representatives from each of the nine FHWA Regions, FHWA Headquarters, and a team from Oak Ridge National Laboratory. This Workgroup had the following five objectives:

1. Review the current Basic Program Funds formula and its factors in a historical context of fairness, equity, and safety impact.
2. Understand the needs of each of the States and Territories and provide an analytical approach to the reexamination of the formula.
3. Consider potential new factors and evaluate their impact upon recipients of MCSAP funds.
4. Discuss options for building safety performance measurements into the process of apportioning funds to the States.
5. Produce a Basic Program Funds formula which more effectively apportions the available funds as fairly as possible as an incentive for improved CMV safety performance.

During the most recent Basic Program Funds formula review, the Workgroup re-examined the five current formula factors (road mileage, vehicle miles traveled, registrations, population, and fuel consumption). Each factor was examined for reliability, stability over time, and for correlation with other factors to ensure that they were not redundant. The Workgroup found that truck registration data do not measure CMV activity, because vehicles may be registered in one State but operate primarily in another State. The Workgroup also recognized that CMV registration often reflects where registration costs are the lowest, rather than where the vehicle is operated. Furthermore, the quality of registration data is suspect since vehicle registration numbers can fluctuate greatly year by year. The four remaining factors were considered valid because they continue to provide a measure of overall traffic volume, indicate the potential for crashes, relate to motor carrier activity levels, are easy to understand, and are

derived from reliable sources. The Workgroup also decided that annual population estimates issued by the U.S. Bureau of the Census are preferred to the decennial census because the annual figures more accurately represent the current population and its gradual change over the years does not cause extreme fluctuation of the funding allocation.

Potential New Factors

The Workgroup discussed a large number of potential Basic Program Funds formula factors. These factors were identified in an attempt to better and more fairly quantify the level of CMV activity within any given State or Territory. The following sixteen potential formula factors were considered and ultimately rejected for the reasons provided.

1. Cost of Living. Proposed funding increases need to be driven by CMV safety program requirements rather than the general condition of the U.S. economy.

2. Intelligent Transportation System (ITS) activities. MCSAP funds are safety enforcement-oriented. Other funding sources are available to develop new technology.

3. Intermodal Activities. There are no reliable data sources available at the current time.

4. Number of CMV Crashes. The Motor Carrier Management Information System (MCMIS) crash file is not yet sufficiently populated to be considered ready for rigorous use as a funding factor.

5. Number of Commercial Buses. There is no reliable source of data at this time.

6. Number of Commercial Driver's Licenses (CDL). The current system does not purge records of inactive drivers, creating difficulty in establishing an accurate count of active CMV drivers.

7. State Contribution/Effort. This factor is a very difficult number to quantify and verify.

8. Land Area. Land area was not considered to be a fair factor because larger geographical areas do not necessarily represent more motor carrier activity.

9. Commercial Truck VMT. This factor is not easy to derive from "Highway Statistics" data since that publication reports the total VMT of all

vehicles. Neither the International Registration Plan (IRP) nor the International Fuel Tax Agreement (IFTA) can be used as a source of data because they currently lack uniformity and consistency.

10. Hazardous Materials. It is very difficult to establish a reliable, easily verifiable number of motor carriers.

11. Number of Commercial Motor Carriers. The MCMIS carrier census file does not contain information on the number of intrastate motor carriers. It is difficult to derive the number of intrastate motor carriers within a State using the MCMIS and other data sources (e.g., the Truck Inventory and Use Survey [TIUS]).

12. Lane Miles. Lane miles are highly correlated with road miles which is a well-understood current factor.

13. Miles of Interstate Highways. Interstate miles are also highly correlated with road miles.

14. Miles of National Highway System (NHS). NHS miles are also highly correlated with road miles. The category, however, is too restrictive by itself to be a factor.

15. Three-year Moving Average of Population Estimates. The annual population estimates are easier to use and more accurate and verifiable.

16. Traffic Density Index. Traffic density was defined by VMT/road miles, VMT/lane miles, and commercial VMT/lane miles. All three definitions were tested. Analysis suggested that the traffic density index at the State level does not accurately reflect the potential for crash involvement.

Proposed Allocation Formula

After extensive analysis, the Workgroup proposed that the following four factors be included in the Basic Program Funds formula for determining funds allocation to the States:

1. Road Miles. This factor measures crash exposure, is easily understood, applies to all types of vehicles, is very stable over time, and is recognized by the States.

2. Total vehicle miles traveled (VMT). This is acceptable for the same reasons listed in number 1.

3. Annual population estimates. Population is a factor which is recognized by the States. The annual estimates are preferred because they are highly correlated to the decennial

census yet most accurately reflect population sizes each year versus every 10 years.

4. Special fuel consumption. This factor reflects the level of motor carrier activity within a State, is derived from an audited program for all States, and is based on actual fuel usage within a State.

The Workgroup recommends that each factor be equally weighted at 25 percent. The rationale for this decision is that the resulting MCSAP allocations would likely correlate with the crash rates reported by the Fatal Analysis Reporting System (FARS). The formula, using four factors equally weighted, would allocate the greatest share of formula funds to the States with the largest number of crashes, and would provide funding levels largely consistent with current formula allocations.

In order to achieve a balanced program and ensure every State is afforded an opportunity to participate in the MCSAP, the apportionment formula was adjusted for maximum and minimum allocations. The ceiling amount was held at 4.944 percent of the

total amount available for allocation. The Territories receive a fixed amount of \$250,000 (their 1996 formula funding level without the Traffic Enforcement and Hazardous Materials earmarked funds). The minimum allocation for the States and Puerto Rico was raised to \$350,000 or 0.44 percent of the formula funds available for allocation, whichever is greater. The rationale for setting higher minimum allocations for the States and Puerto Rico than for the Territories is because the Territories have low population levels, road miles, and VMT (no statistics are provided for special fuel consumption).

The FHWA proposes a Basic Program Funds allocation formula based upon the four equally-weighted factors computed considering maximum and minimum limits.

Performance Factor

After calculating a State's Basic Program Funds using the formula, the FHWA proposes to adjust the State's basic program funding level by applying a factor based upon a State's performance in reducing its CMV crash rate. "Crash rate" is defined as the

number of fatal crashes involving large CMVs, as measured by the FARS, divided by the State's annual population estimate. If the crash rate for the most recent calendar year for which data are available exceeds the individual State's 10-year average crash rate, the State's Basic Program Funds allocation would be decreased by the amount that the crash rate increased, up to a maximum penalty of 1 percent for each consecutive year of increase in the State crash rate.

The methodology for incorporating the performance factor would be as follows:

1. For the FY 2000 distribution, the FHWA would calculate a State's 10-year average crash rate period from 1988 through 1997. The 10-year average crash rate would be calculated by dividing [the number representing the State's aggregate number of large truck involved fatal crashes as reported in FARS from 1988 through 1997] by [the number representing the State's aggregate annual population estimate as reported by the U.S. Census Bureau for the same 10-year period].

$$\frac{\text{aggregate large truck fatal crashes}}{\text{aggregate annual population estimates}} = [\text{10-year average crash rate}]$$

2. The FHWA would then calculate the State's 1998 crash rate. The formula would be as follows:

$$\frac{\text{1998 FARS large truck fatal crashes}}{\text{1998 Census population estimates}} = [\text{1998 crash rate}]$$

3. If a comparison reveals the State's crash rate has increased, the State would be penalized by the amount representing the rate of increase. For example, if the 10-year average crash rate for the period from 1988-1997 is .001865, and the 1998 crash rate is .001878, the factor would be calculated as follows: .001878 minus .001865 equals .000013. The number .000013 divided by .001865 times 100 equals 0.70 percent. The State would, therefore, lose 0.70 percent of its FY 2000 Basic Program Funds. The maximum forfeiture for FY 2000 would be 1 percent.

$$\begin{aligned} .001878 - .001865 &= .000013 \\ .000013 \div .001865 \times 100 &= .70\% \end{aligned}$$

increase in rate

4. If a comparison reveals that the crash rate has decreased, the State would be eligible for an upward adjustment of its Basic Program Funds allocation. The funds forfeited by States under the performance adjustment would be redistributed equally among those States where the crash rate improves. These adjustments would be made prior to distribution of funds.

5. The performance factor would limit the penalty for a State with an increased crash rate to no more than 1 percent for each consecutive year the crash rate increased. For example, if a State were to experience an increase in crash rate in year 1, the penalty would be a maximum of 1 percent. If in year 2, the State crash rate remained level with

year 1, the State would receive its full Basic Program Funds allocation. If in year 2, the State crash rate went down, the State would receive the full Basic Program Funds allocation plus an upward adjustment to reflect its improved crash rate. If in year 2, the crash rate went up, the State would lose a maximum of 2 percent. If the crash rate continues to be above the 10-year average rate in consecutive years, the maximum forfeiture will increase to 2 percent, 3 percent, and 4 percent, in the second, third, and fourth occurrences, respectively.

6. The calculations in steps 1 through 5 would be repeated in FY 2001 through 2003, adjusting the variables as follows:

Calculation year	Ten-year variable	Most recent data year variable	Maximum penalty cap (percent)
2001	1989–1998	1999	2
2002	1990–1999	2000	3
2003	1991–2000	2001	4

Incentive Funding

The primary objective of the MCSAP is to reduce CMV-involved crashes and resultant fatalities, injuries, and property damage. The agency is using a performance-based approach to encourage grant recipients to improve highway safety performance. To that end, the FHWA proposes to reward those States that reduce CMV-involved fatal crashes, CMV-involved fatal crash rates, and/or have programs that meet specified safety performance criteria. Eligibility for Incentive Funds is not conditioned upon the results of the performance factor computation. Incentive Funds would be awarded as follows:

1. Reduction of CMV-involved fatal crashes. States achieving any reduction would be awarded five shares.
2. Reduction of CMV-involved crash rates. States reducing the CMV-involved crash rate would be awarded four shares.
3. Timely reporting of CMV crash data within FHWA policy guidelines. States uploading CMV crash reports within policy guidelines would be awarded three shares.
4. Status verification of all CDLs through the Commercial Driver's License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS), or State licensing authority as part of the State inspection process. States certifying that all CDLs are verified as part of the vehicle/driver inspection process, through CDLIS, NLETS, or the State licensing authority, would be awarded two shares.
5. Reporting of inspection data within FHWA policy guidelines. States uploading CMV inspection reports within policy guidelines would be awarded one share.

The total of all States' shares would be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation would then be determined by the number of shares it has received that year.

The FHWA would assist States in finalizing the MCSAP budget request by estimating the potential Incentive Funds available to them for the upcoming fiscal year.

Compatibility

In addition to the annual regulatory review for compatibility of State laws and regulations required to be submitted with the CVSP, the FHWA is proposing to require a State to submit, within 30 days after enactment, to the appropriate FHWA field office for review, a copy of any law or regulation affecting CMV safety. The FHWA is also proposing to eliminate the current tolerances in Appendix C, Paragraph 2(a) related to hazardous materials enforcement. As of October 1, 1998, the HMRs are applicable to transportation of hazardous materials by highway, and departmental policy is to promote the full involvement of State CMV safety enforcement resources in ensuring compliance with these regulations. Therefore, all States will be required to achieve full compatibility for both interstate and intrastate hazardous materials transportation within three years after the effective date of October 1, 1998.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated at the beginning of this document will be considered and will be available for examination in the docket at U.S. DOT Dockets, room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001 or using the Department of Transportation Docket Management System located at the Internet address <http://dms.dot.gov>. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information that becomes available after the comment closing date in the docket. Interested persons should continue to examine the docket for new material. Nevertheless, the FHWA may issue a final rule at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not constitute a significant regulatory action for the purposes of Executive Order 12866 or a

significant regulation under the regulatory policies and procedures of the DOT. These proposed changes to the FMCSRs would not cause an annual impact on the economy of over \$100 million, and they would not adversely affect a sector of the economy in a material way. These changes would not create an inconsistency or otherwise interfere with another agency's actions, nor do they raise novel legal or policy issues. These changes merely implement a recently enacted legislative mandate directing the FHWA to amend its regulations pertaining to the MCSAP. This NPRM proposes to broaden the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. It proposes to revise the MCSAP funding distribution formula, create a new incentive funding program, and require States to develop performance-based CMV safety plans. Thus, in light of this analysis, especially the finding that the economic impact of this action is likely to be minimal, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. It is anticipated that this rulemaking will have little or a non-significant impact upon small entities. The proposed changes merely implement TEA-21 provisions pertaining to the MCSAP affecting only States and local jurisdictions. This NPRM provides a process for making high priority activity, border activity, and information system funds available to local jurisdictions as well as MCSAP agencies. The basic conditions being proposed for local agencies to qualify for these funds are consistent with the conditions local agencies must follow now to receive funds through the MCSAP agency. The number of local agencies that would receive direct funding would be minimal since the FHWA would provide grants directly to local agencies only where it is not possible to work through the lead MCSAP agency. In all circumstances, the local agencies would not be required to participate unless they found that it was in their best interest. Therefore, the

FHWA hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed using the principles and criteria contained in Executive Order 12612. The proposed changes would implement TEA-21 provisions. The MCSAP is a grant-in-aid type program whereby Federal financial assistance is provided to States. The basic nature of the program and the level of total funding for the program are not affected by these proposed changes. The proposed changes do not limit the policy making discretion of the States. Therefore, this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

Paperwork Reduction Act

This rulemaking does not impose new information collection requirements. The only potential change to the existing information collection requirement would be the number of affected parties. These changes will be submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

Title: Motor Carrier Safety Assistance Program (MCSAP).

OMB Number: 2125-0536.

Affected Public: State MCSAP lead agencies and local jurisdictions seeking MCSAP funding.

Abstract: Sections 401-404 of the Surface Transportation Assistance Act of 1982 (STAA) established a program of financial assistance to the States' implementation of programs for the enforcement of (a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety and (b) compatible State rules,

regulations, standards, and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) added programs, such as drug interdiction, traffic enforcement, and size and weight activities conducted in conjunction with CMV inspections to the core program established by the STAA. Sections 4002 and 4003 of the Transportation Equity Act for the 21st Century (TEA-21) further enhance the MCSAP by increasing enforcement activities in key areas where the primary responsibility for CMV enforcement falls upon local agencies. This NPRM proposes to make special allocation grants for high priority activities and projects or border activities available to local agencies in addition to MCSAP State lead agencies. State and local jurisdictions applying for the MCSAP are required to submit a Commercial Vehicle Safety Plan, a certification that their laws and regulations are compatible with the FMCSRs and HMRs, and periodic evaluations of their program to the FHWA.

Need: This information is necessary to enable the FHWA to determine whether a State or local agency meets the statutory and administrative criteria to be eligible for a grant. It is necessary for activities and accomplishments to be reported so that FHWA may monitor and evaluate an agency's progress under its approved plan and make the determinations and decisions required by 49 CFR 350.

Estimated Total Annual Burden: 14,498 hours.

Comments: Comments concerning the paperwork burden and burden hour estimates in this proceeding may be directed to OMB and the FHWA, respectively, by addressing them to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 and Federal Highway Administration, Forms Clearance Officer Earl Coles (HMS-12), Office of Information and Management Services, 400 Seventh Street, SW., Washington, DC 20590.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and it has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of

Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor carrier safety.

Issued: February 24, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, as follows:

1. Part 350 of chapter III of title 49, Code of Federal Regulations, is revised to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Subpart A—General

Sec.

- 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP)?
- 350.103 What is the purpose of this part?
- 350.105 Definitions used in this part.
- 350.107 What jurisdictions are eligible for MCSAP funding?
- 350.109 What are the national program elements?
- 350.111 What constitutes "traffic enforcement" for the purpose of the MCSAP?

Subpart B—Requirements for Participation

- 350.201 What conditions must a State meet to qualify for Basic Program Funds?
- 350.203 What happens to a participating State's Basic Program and Incentive Funds if it adopts an incompatible law or regulation?
- 350.205 How and when does a State apply for MCSAP funding?
- 350.207 What response does a State receive to its CVSP submission?
- 350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?
- 350.211 What is the format of the certification required by § 350.209?
- 350.213 What must a State CVSP include?
- 350.215 What are the consequences of a State failing to perform according to an approved CVSP or otherwise failing to meet the conditions of this part?

Subpart C—Funding

- 350.301 What level of effort must a State maintain to qualify for MCSAP funding?
- 350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?

- 350.305 Are U.S. Territories subject to the matching funds requirement?
- 350.307 How long are MCSAP funds available to a State?
- 350.309 What activities are eligible for reimbursement under the MCSAP?
- 350.311 What specific items are eligible for reimbursement under the MCSAP?
- 350.313 How are MCSAP funds allocated?
- 350.315 How may Basic Program Funds be used?
- 350.317 What are Incentive Funds and how may they be used?
- 350.319 What are permissible uses of High Priority Activity Funds?
- 350.321 What are permissible uses of Border Activity Funds?
- 350.323 What criteria are used in the Basic Program Funds allocation?
- 350.325 How is the performance factor determined?
- 350.327 How may States qualify for Incentive Funds?
- 350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?
- 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?
- 350.333 What are the guidelines for the compatibility review?
- 350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?
- 350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?
- 350.339 What are tolerance guidelines?
- 350.341 What specific variances from State laws and regulations governing motor carriers, CMV drivers and CMVs engaged exclusively in intrastate commerce are allowed?
- 350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved exclusively in intrastate commerce and not be subject to Federal jurisdiction?
- 350.345 How does a State apply for additional variances from the tolerance guidelines?

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.48.

Subpart A—General

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

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the MCSAP is to reduce CMV-involved crashes, 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 a crash. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs).

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure the FHWA, States, and other political jurisdictions work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system.

§ 350.105 Definitions used in this part.

Administration—means the Federal Highway Administration (FHWA).

Administrative Takedown Funds—funds deducted by the FHWA each fiscal year from the amount made available for the MCSAP for expenses incurred in the administration of the MCSAP, including expenses to train State and local government employees and develop related training materials.

Administrator—means the Federal Highway Administrator.

Basic Program Funds—means the total MCSAP funds less the High Priority Activity, Border Activity, Administrative Takedown, and Incentive Funds.

Border Activity Funds—funds provided to States, local governments, and other persons carrying out programs, activities, and projects relating to CMV vehicle safety and regulatory enforcement supporting the North American Free Trade Agreement (NAFTA) at the U.S. border. Up to 5 percent of total MCSAP funds are available for these activities.

Commercial Motor Vehicle (CMV)—means a motor vehicle that has any of the following three 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, designed or used to transport 16 or more passengers, including driver.

(3) Regardless of weight, used in the transportation of hazardous materials and is required to be placarded under the HMRs (49 CFR Part 172, Subpart F).

Commercial Vehicle Safety Plan—The grant application document for States

seeking to participate in the Motor Carrier Safety Assistance Program. The application must be approved by the Office of Motor Carriers for States to qualify for MCSAP funds. The plan consists of an assessment of the previous year's achievements, the State's projected activities for the coming year, based upon identified problems, and evaluation measures which allow the State to assess program outcomes. It must also contain an itemized budget and a budget summary, and the State's projected training plan for the new year. The CVSP must be accompanied by a Certification of Compliance, and a copy of any new or revised State law that bears on any item listed in the Certificate.

Compatible or Compatibility—means that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and HMRs. State laws applicable to intrastate commerce are either identical to the FMCSRs or fall within the established limited variances under § 350.341 of this part.

High Priority Activity Funds—funds provided to States, local governments, and other persons carrying out activities and projects that are of high priority and improve CMV safety and CMV safety regulation compliance. Up to 5 percent of total MCSAP funds are available for these activities.

Incentive Funds—funds awarded to States achieving reductions in CMV involved fatal crashes, CMV crash rate, or meeting specified CMV safety program performance criteria.

Motor Carrier—means a for-hire motor carrier or private motor carrier. The term includes a motor carrier's agents, officers, or representatives responsible for hiring, supervising, training, assigning, or dispatching a driver or concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories or both.

North American Standard

Inspection—The methodology used by State CMV safety inspectors when they 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 the Office of Motor Carriers with the Commercial Vehicle Safety Alliance, an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting commercial motor vehicles in their jurisdiction.

Performance Factor—An adjustment to a State's annual Basic Program Funds

based upon its CMV crash rate for the last full year for which data is available.

§ 350.107 What jurisdictions are eligible for MCSAP funding?

All of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from the FHWA. For purposes of this subpart, all references to "State" or "States" include these jurisdictions.

§ 350.109 What are the national program elements?

The national program elements include the following five activities:

- (a) driver/vehicle inspections;
- (b) traffic enforcement;
- (c) compliance reviews;
- (d) public education and awareness;
- and
- (e) data collection.

§ 350.111 What constitutes "traffic enforcement" for the purpose of the MCSAP?

Traffic enforcement means those activities carried out by duly authorized State or local enforcement officials which include stopping CMVs operating on highways, streets, or roads after having been detected as being in violation of State or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane change). To be eligible for funding through the grant, the enforcement official must conduct an inspection of the CMV or driver or both prior to releasing the driver or CMV or both for resumption of operations.

Subpart B—Requirements for Participation

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

Your State must meet the following twenty-two conditions:

- (a) Assume responsibility for improving motor carrier safety and adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs and HMRs.
- (b) Implement a performance-based program by the beginning of Fiscal Year 2000 and submit a CVSP which will serve as the basis for monitoring and evaluating your State's performance.
- (c) Designate in its certification the lead State agency responsible for implementing the CVSP.
- (d) Ensure that only agencies having the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations are assigned to perform functions in accordance with the approved CVSP.

- (e) Allocate adequate funds for the administration of the CVSP which includes the enforcement of the FMCSRs, HMRs, or compatible State laws or regulations.

- (f) Maintain the aggregate expenditure of funds by the State and its political subdivisions, exclusive of Federal funds, for CMV safety programs and related programs eligible for funding under this part at a level at least equal to the average expenditure for its last three full Federal or State fiscal years before December 18, 1991.

- (g) Provide legal authority for a right of entry and inspection adequate to carry out the CVSP.

- (h) Prepare and submit, upon request, all reports as required in connection with the CVSP or other conditions of the grant to the FHWA.

- (i) Adopt uniform reporting requirements and use uniform forms to record work activities performed under the CVSP as may be established and required by the FHWA.

- (j) Require registrants of CMVs to declare, at the time of registration, their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations.

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

- (l) Conduct CMV size and weight enforcement activities funded under this program only to the extent those activities do not diminish the effectiveness of other CMV safety enforcement programs.

- (m) Coordinate the CVSP, data collection and information systems with State highway safety programs under title 23, U.S.C.

- (n) Ensure participation in SAFETYNET 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) Emphasize and improve enforcement of State and local traffic laws and regulations related to CMV safety.

- (q) Promote activities in support of national priorities and performance goals, including the following three activities:

- (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) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.

- (r) Enforce requirements relating to the licensing of CMV drivers, including checking the status of commercial driver's licenses.

- (s) Require the proper and timely correction of CMV safety violations noted during inspections carried out with MCSAP funds.

- (t) Enforce registration and financial responsibility requirements of 49 U.S.C. 31138 and 31139.

- (u) Adopt and maintain consistent, effective, and reasonable sanctions for violations of CMV, driver, and hazardous materials regulations.

- (v) Conduct roadside inspections at locations that are adequate to protect the safety of drivers and enforcement personnel.

§ 350.203 What happens to a participating State's Basic Program and Incentive Funds if it adopts an incompatible law or regulation?

A State that currently has compatible laws and regulations pertaining to interstate and intrastate CMV safety but adopts a law or regulation which results in an incompatible rule (i.e., neither identical to the FMCSRs or within the tolerance guidelines), would not be eligible for Basic Program Funds or Incentive Funds.

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

- (a) The lead agency, designated by the Governor, must submit your State's CVSP to the State Director, Office of Motor Carriers (OMC), FHWA, on or before August 1 of each year.

- (b) This deadline may, for good cause, be extended by the OMC State Director for a period not to exceed 30 calendar days.

- (c) For a State to receive funding, the CVSP must be complete and include all required documents.

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

- (a) The FHWA will notify your State, in writing, within 30 days of receipt of the CVSP whether:

- (1) The plan is approved.
- (2) Approval of the plan is withheld because the CVSP 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 approval is withheld, your State will then have 30 days from the date of the notice to modify and resubmit the plan.

(c) Disapproval of a resubmitted plan is final.

§ 350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?

(a) The Governor, the State's Attorney General, or other State official specifically designated by the Governor, must submit a certification that the State is in compliance the requirements of § 350.201 of this part.

(b) Your State must submit the certification along with its CVSP, and supplement it with a copy of any State law, regulation, or form pertaining to CMV safety adopted since the State's last certification, if any, that bears on the items contained in § 350.201 of this part.

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

Your State's certification must be consistent with the following content: I (name), (title), on behalf of the State (Commonwealth) of (State), as requested by the Federal Highway 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:

1. The State has adopted commercial motor carrier and highway hazardous materials safety rules and regulations that are compatible with the FMCSRs and the HMRs.

2. The State has designated (name of State CMV safety agency) as the lead agency to administer the CVSP for the grant sought and (names of agencies) to perform defined functions under the plan. These agencies have the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws or regulations.

3. 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 or regulations in a manner consistent with the approved plan.

4. The laws of the State provide the State's enforcement officials right of entry 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 Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.

5. 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 FHWA on request.

6. The State has uniform reporting requirements and uses FHWA designated forms for record keeping, inspection, and other enforcement activities.

7. The State has in effect a requirement that registrants of CMVs declare their knowledge of the applicable Federal or State CMV safety laws or regulations.

8. The State will maintain the level of its expenditures, exclusive of Federal assistance, at least at the level of the average of the aggregate expenditures of the State and its political subdivisions during the past three full State or Federal fiscal years immediately before December 18, 1991. These expenditures must cover at least the following four program areas, if applicable:

- a. Motor carrier safety programs in accordance with § 350.301,
- b. Size and weight enforcement programs,
- c. Traffic safety, and
- d. Drug interdiction enforcement programs

9. The State will ensure that violation fines imposed and collected by the State are consistent, effective, and equitable.

10. The State will ensure timely and proper correction of violations discovered during inspections conducted using MCSAP funds.

11. The State will ensure that the CVSP is coordinated with the State highway safety plan under 23 U.S.C. 402. The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished) is (Name) .

12. The State has participated in SAFETYNET since (Date) .

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

14. The State will ensure that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel.

Date _____

Signature _____

§ 350.213 What must a State CVSP include?

Your State's CVSP must reflect a performance-based program, and contain the following thirteen items:

(a) A statement of the State agency goal or mission.

(b) A comprehensive evaluation of the effectiveness of the prior years' activities in reducing CMV accidents, injuries and fatalities, and improving driver and motor carrier safety performance. Evaluation data should measure program progress in one-year increments. This may be calendar year or fiscal year or any other 12-month period of time chosen by the State. The evaluation should show trends supported by safety and program performance data collected over several years. It should identify safety or performance problems in the State and those problems should be addressed in the new or modified CVSP.

(c) A brief narrative describing how the State program addresses the national program elements listed in § 350.109. The plan should address these elements even if there are no planned activities in one of the program areas. The rationale for the resource allocation decision should be explained.

(d) A definitive problem statement for each objective which is supported by data or other information. The CVSP must identify the source of the data, and who is responsible for its collection, maintenance, and analysis.

(e) Performance objectives, stated in quantifiable terms, to be achieved through the State plan. Objectives should include a measurable reduction in highway accidents or hazardous materials incidents involving CMVs. The objective may also include documented improvements in other program areas (e.g., legislative or regulatory authority, enforcement results, or resource allocations).

(f) Strategies to be employed to achieve performance objectives. Strategies may include driver/vehicle roadside inspections, compliance reviews, training, public or industry outreach, drug or alcohol enforcement, CDL activities, or use of technology used to address identified problems and stated objectives to improve CMV safety.

(g) Specific activities intended to achieve the stated strategies and objectives. This item should also describe what resources will be used in carrying out each activity and should be related to preparation of the CVSP budget for the State. Planned activities must be eligible under this program as defined in § 350.309.

(h) Specify quantifiable performance measures, as appropriate. These

performance measures will be used to assist the State in monitoring the progress of its program and preparing an annual evaluation.

(i) A description of the State's method for ongoing monitoring of the progress of its plan. This should include who will conduct the monitoring, the frequency with which it will be carried out, and how and to whom reports will be made.

(j) A budget supported by the CVSP describing the expenditures for allocable costs such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.311.

(k) A budget summary including planned expenditures for that fiscal year in each national program area.

(l) The results of the annual review to determine the compatibility of State laws and regulations with the FMCSRs and HMRs.

(m) A copy of any new law or regulation affecting CMV safety enforcement that was enacted by the State since the last CVSP was submitted.

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

(a) If your State is not performing according to an approved plan or not adequately meeting conditions under § 350.201, the Administrator may issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice will set forth the reasons for the proposed determination.

(b) Your State will then have 30 days from the date of the notice to reply. Your reply must address the deficiencies or incompatible situation cited in the notice and provide documentation as necessary.

(c) Based upon your State's reply, the Administrator will make a final decision.

(d) In the event your State fails to reply to a notice of proposed determination of nonconformity in accordance with the provisions of paragraph (b) of this section, the proposed determination becomes the Administrator's final decision.

(e) Any adverse decision will result in immediate cessation of Federal funding under this part.

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

Subpart C—Funding

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

(a) Your State must maintain the average aggregate expenditure (monies spent during the base period of the three full Federal or State fiscal years before December 18, 1991) of State funds for motor carrier and highway hazardous materials safety enforcement purposes, in the year in which the grant is sought.

(b) Your State may use either the Federal or State Fiscal years.

(c) In determining the State's maintenance of effort, you should not include:

(1) Federal funds received for support of motor carrier and hazardous materials safety enforcement,

(2) State matching funds, or

(3) State funds used for federally sponsored demonstration or pilot CMV safety programs.

(d) You must include costs associated with activities performed during the base period by State or local agencies currently receiving or projected to receive funds under this Part. You must include only those activities which meet the current requirements for funding eligibility under the grant program.

§ 350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?

(a) The FHWA will reimburse up to 80 percent of the eligible costs incurred in the administration of an approved CVSP.

(b) In-kind contributions are acceptable in meeting your State's matching share if they represent eligible costs as established by 49 CFR Part 18 or agency policy.

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

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

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

The funds obligated to a State will remain available for the rest of the fiscal year in which they were obligated and the next full fiscal year. The State must account for any prior year's unexpended funds in the annual CVSP. Funds must be expended in the order in which they are obligated.

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

The primary activities eligible for reimbursement are:

(a) The five national program elements contained in § 350.109 of this part.

(b) Sanitary food transportation inspections performed under 49 U.S.C. 5708.

(c) The following three activities, when accompanied by an appropriate inspection and inspection report:

(1) Enforcement of size and weight regulations conducted at locations other than fixed scales (i.e., specific geographic locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or seaports where intermodal shipping containers enter and exit the United States).

(2) Detection of the unlawful presence of controlled substances in a CMV or on the driver or any occupant of a CMV.

(3) Enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs.

§ 350.311 What specific items are eligible for reimbursement under the MCSAP?

All reimbursable items must be necessary, reasonable, allocable to the approved CVSP, and allowable under this part and 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The eligibility of specific items is subject to review by the FHWA. The following six types of expenses are eligible for reimbursement:

(a) Personnel expense, including recruitment and screening, training, salaries and fringe benefits, and supervision.

(b) 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.

(c) Indirect expenses for facilities, except fixed scales, used to conduct inspections or house enforcement personnel, support staff, and equipment to the extent they are measurable and recurring (e.g., rent and overhead).

(d) Expenses related to data acquisition, storage, and analysis specifically identifiable as program related to develop a data base to coordinate resources and improve efficiency.

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

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

§ 350.313 How are MCSAP funds allocated?

(a) After deducting administrative expenses authorized in 49 U.S.C. 31104(e), the MCSAP funds are allocated as follows:

(1) Up to 5 percent of the MCSAP funds for each Fiscal Year may be distributed for High Priority Activities and Projects at the discretion of the Administrator.

(2) Up to 5 percent of the MCSAP funds for each Fiscal Year may be distributed for Border CMV Safety and Enforcement Programs at the discretion of the Administrator.

(3) The remaining funds will be allocated among qualifying States in two ways:

(i) As Basic Program Funds in accordance with § 350.313 of this part,
 (ii) as Incentive Funds in accordance with § 350.313 of this part.

(4) The Basic Program Funds allocation may be subject to a performance factor, as provided in § 350.325 of this part.

(b) The funding provided in paragraphs (a)(1) and (a)(2) of this section may be awarded through contract, cooperative agreement, or grant. Local jurisdictions may qualify to

participate in these programs. The FHWA will annually notify States if it intends to solicit State grant proposals for any portion of this funding.

(c) The funding provided under paragraphs (a)(1) and (a)(2) of this section may be made available to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State Motor Vehicle Safety agencies.

(d) Table 1 of this section describes the distribution of MCSAP funds, as follows:

TABLE 1 OF § 360.313(D).—MCSAP FUNDS DISTRIBUTION

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Total MCSAP funds	\$95,000,000	.....	\$100,000,000	.....	\$105,000,000	.....	\$110,000,000	.....
Administrative take-down	1,187,500	.....	1,250,000	.....	1,312,500	.....	1,375,000	.....
High priority activities ...	4,750,000	.....	5,000,000	.....	5,250,000	.....	5,500,000	.....
Border activities	4,750,000	.....	5,000,000	.....	5,250,000	.....	5,500,000	.....
Basic program funds	75,881,250	90	75,437,500	85	74,550,000	80	73,218,750	75
Incentive funds	8,431,250	10	13,312,500	15	18,637,500	20	24,406,250	25

§ 350.315 How may Basic Program Funds be used?

Basic Program Funds may be used for any eligible activity consistent with § 350.309 of this part.

§ 350.317 What are Incentive Funds and how may they be used?

Incentive Funds are monies, in addition to Basic Program Funds, provided to the States that achieve reduction in CMV-involved fatal crashes, CMV crash rate, or that meet specified CMV safety performance criteria. Incentive Funds may be used for any eligible activity consistent with § 350.309 of this part.

§ 350.319 What are permissible uses of High Priority Activity Funds?

(a) The FHWA may generally use these funds to support, enrich, or evaluate State CMV safety programs and to accomplish the five objectives listed below:

(1) Implement, promote, and maintain national programs to improve CMV safety.

(2) Increase compliance with CMV safety regulations.

(3) Increase public awareness about CMV safety.

(4) Provide education on CMV safety and related issues.

(5) Demonstrate new safety related technologies.

(b) These funds will be allocated, at the discretion of the FHWA, to States, local governments, and other organizations that use and train qualified officers and employees in coordination with State safety agencies.

(c) The FHWA will notify the States when such funds are available.

(d) The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

§ 350.321 What are permissible uses of Border Activity Funds?

The FHWA may generally use such funds to develop and implement a national program addressing CMV safety and enforcement activities along the United States' borders.

These funds will be allocated, at the discretion of the FHWA, to States, local

governments, and other organizations that use and train qualified officials and employees in coordination with State safety agencies. The FHWA will notify the States when such funds are available. The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

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

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

(1) Road miles (all highways).

(2) All vehicle miles traveled (AVMT).

(3) Population—annual census estimates as issued by the U.S. Census Bureau.

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

(b) Distribution of Basic Program Funds is subject to a maximum and minimum allocation as illustrated in Table 2 to this section, as follows:

TABLE 2 OF § 350.323(B).—BASIC PROGRAM FUND ALLOCATION LIMITATIONS

Recipient	Maximum allocation	Minimum allocation
States and Puerto Rico	4.944% of the Basic Program Funds	\$350,000 or 0.44% of Basic Program Funds, whichever is greater.
U.S. Territories		\$250,000 (fixed amount)

§ 350.325 How is the performance factor determined?

(a) The performance factor is determined by calculating the ratio of fatal crashes in your State involving large trucks as compiled by the Fatal Analysis Reporting System (FARS) administered by the National Highway Traffic Safety Administration (NHTSA), and population estimates in your State as reported annually by the U.S. Census Bureau. This ratio is known as the "crash rate." The performance factor adjustment is calculated using the crash rate as follows:

(1) For each State, an average crash rate is computed for the 10-calendar-year period prior to the previous full calendar year or the most recent year that data are available.

(2) If the crash rate for the most recent calendar year for which data is available exceeds the 10-year average crash rate, the State's allocation will be reduced by the amount the crash rate increased. The maximum reduction cannot exceed 1 percent.

(3) If the crash rate continues to be above the 10-year average crash rate, in subsequent consecutive years, the maximum forfeiture will increase by up to 1 percent each year.

(4) If the State's most current crash rate is not above the 10-year average crash rate, there will be no reduction.

(b) The funds withheld from States because of the performance adjustment will be redistributed equally among those States showing a crash rate improvement.

§ 350.327 How may States qualify for Incentive Funds?

(a) Your State may qualify for Incentive Funds if it can demonstrate that its CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction of CMV-involved fatal crashes.

(2) Reduction of CMV-involved crash rate.

(3) Upload CMV crash data within FHWA policy guidelines.

(4) Verification, during the roadside inspection process, of the status and validity of all CDLs through CDLIS, NLETS, or the State licensing authority.

(5) Upload of CMV inspection data within FHWA policy guidelines.

(b) Incentive Funds will be distributed based upon the following five safety and program performance factors:

(1) The number of CMV-involved fatal crashes for the most recent calendar year for which data are available is compared to the 10-year average number of CMV fatal crashes ending with the

preceding year. The number of CMV-involved fatal crashes, as reported to FARS, will be computed for the 10-year average. Five shares will be awarded for any reduction.

(2) The crash rate for the most recent calendar year for which data are available is compared to the average 10-year crash rate. Four shares will be awarded for any reduction.

(3) Three shares will be awarded States that upload CMV crash reports within FHWA policy guidelines.

(4) Two shares will be awarded States that certify that all CDLs are verified, as part of the inspection process, through CDLIS, NLETS, or the State licensing authority.

(5) One share will be awarded States that upload CMV inspection reports within FHWA policy guidelines.

(c) The total of all States' shares will be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation will then be determined by the number of shares it has that year, multiplied by the dollar value of one share.

(d) States may use Incentive Funds for any eligible CMV safety purpose.

(e) Incentive Funds are subject to the same State matching requirements as Basic Program Funds.

(f) A State must annually certify compliance with the applicable incentive criteria to receive Incentive Funds.

(g) A State may submit the required certification as part of its CVSP or separately.

§ 350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?

(a) States must meet the requirements of § 350.201 of this part;

(b) Local agencies must meet the following nine conditions:

(1) Prepare a proposal in accordance with § 350.201 of this part.

(2) Coordinate the proposal with the State lead MCSAP agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(3) Certify your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to accomplish the following three activities:

(i) Enforce the FMCSR's or HMR's.

(ii) Enforce compatible State regulations.

(iii) Implement a special grant activity.

(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 20 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.

(7) Agree to use the forms and reporting criteria required by the State lead MCSAP agency and/or the FHWA to record work activities to be performed under proposal.

(8) Certify effective and equitable sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

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

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

(a) Your State must review any new law or regulation enacted, or any proposed law or regulation affecting CMV safety as soon as possible, but in any event immediately after enactment or issuance, for compatibility with the FMCSRs and HMRs.

(b) If your review determines that the new law or regulation is incompatible with the FMCSRs and/or HMRs, you must immediately notify the OMC State Director.

(c) Your State must conduct an annual review of its laws and regulations for compatibility and report the results of that review as a part of the annual CVSP in accordance with § 350.209(b) of this part with a certification of compliance, no later than August 1 of each year. The report must include the following two items:

(1) A copy of your State law, regulation, or policy relating to CMV safety that was adopted since your State's last report.

(2) A certification, executed by your State's Governor, Attorney General, or other State official specifically designated by the Governor, stating that the annual review was performed and that State CMV safety laws remain compatible with the FMCSRs and HMRs. If State CMV laws are no longer compatible, the certifying official shall explain why not.

(d) As soon as practical after the effective date of any amendment to the FMCSRs or HMRs, but no later than three years after that date, your State must amend its laws or regulations to make them compatible with the FMCSRs and/or HMRs, as amended.

§ 350.333 What are the guidelines for the compatibility review?

(a) The law or regulation must apply to all segments of the motor carrier industry (i.e., for-hire and private motor carriers of property and passengers).

(b) Laws and regulations reviewed for the CDL compliance report are excluded from the compatibility review.

(c) Definitions of words or terms must be consistent with those in the FMCSRs and HMRs.

(d) Your State must identify any law or regulation that is not the same as the

corresponding Federal regulation and evaluate it in accordance with Table 3 to this section, as follows:

TABLE 3 TO § 350.333.—GUIDELINES FOR THE STATE LAW AND REGULATION COMPATIBILITY REVIEW

Law or regulation has same effect as corresponding Federal regulation	Applies to interstate or intrastate commerce	Less stringent or more stringent	Action authorized
Yes .....	.....	.....	Compatible—Interstate and intrastate commerce enforcement authorized.
No	Intrastate .....	.....	Refer to § 350.341.
No	Interstate	Less stringent	Enforcement prohibited.
No	Interstate	More stringent	Enforcement authorized if the State can demonstrate the law or regulation has a safety benefit or does not create an undue burden upon interstate commerce.

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

(a) Upon a finding by the FHWA, based upon its own initiative or upon a petition of any person, including any State, that your State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs, the FHWA may initiate a proceeding under § 350.215 of this part for withdrawal of your State's funding.

(b) Any decision regarding the compatibility of your State law or regulation with the HMRs that requires an interpretation will be referred to the Research and Special Programs Administration of the DOT for such interpretation before proceeding under § 350.215 of this part.

§ 350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?

All State laws and regulations governing motor carriers, CMV drivers, and CMVs may only vary from the Federal requirements applying to the transportation of migrant workers under Part 398 of this subchapter and still be considered compatible for purposes of MCSAP funding.

§ 350.339 What are tolerance guidelines?

Tolerance guidelines set forth the limited deviations from the FMCSRs allowed in your State's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged exclusively in intrastate commerce and not subject to Federal jurisdiction.

§ 350.341 What specific variances from State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged exclusively in intrastate commerce are allowed?

(a) A State may exempt from all or part of their regulations CMVs with a GVW, GVWR, or GCWR less than 11,801 kg (26,001 lbs.) and engaged exclusively in intrastate commerce unless the vehicle meets either of the following two conditions:

(1) Transports hazardous materials requiring a placard.

(2) Is designed or used to transport 16 or more people including the driver.

(b) State laws and regulations may not grant exceptions or exemptions based upon the type of transportation being performed.

(c) A State may retain those exceptions and exemptions from their motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating exclusively in intrastate commerce.

(d) State laws and regulations must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs nor to the extension of the mileage radius exemption, contained in 49 CFR 395.1(e), from 100 to 150 miles.

(e) Hours of service—State hours-of-service limitations applied to intrastate transportation may vary to the following extent:

(1) A 12-hour driving limit, provided driving a CMV after having been on duty more than 16 hours is prohibited.

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

(f) Age of CMV driver—All CMV drivers must be at least 18 years old.
 (g) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs.

(h) Driver qualifications:

(1) 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 the following three conditions are met:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.

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

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

(2) The State may adopt or continue programs granting waivers to drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the waivers are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse impact on safety.

§ 350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved exclusively in intrastate commerce and not be subject to Federal jurisdiction?

The FHWA strongly discourages exemptions and exceptions for specific industries, but will consider such requests if the State submits documentation containing information supporting evaluation of the following 10 factors:

(a) Type and scope of the industry exception requested, including percentage of industry affected, number

of vehicles, mileage traveled, number of companies involved.

(b) Type and scope of the requirement to which the exception or exemption would apply.

(c) Safety performance of that specific industry (e.g., accident frequency, rates and comparative figures).

(d) Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).

(e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.

(f) Commodity transported (e.g., livestock, grain).

(g) Similar variations granted and the circumstances under which they were granted.

(h) Justification for the exception or exemption.

(i) Identifiable effects on safety.

(j) State's economic environment and its ability to compete in foreign and domestic markets.

§ 350.345 How does a State apply for additional variances from the tolerance guidelines?

Any State may apply to the FHWA Administrator for a variance from the tolerance guidelines. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

(a) Achieves substantially the same purpose as the similar Federal regulation,

(b) Does not apply to interstate commerce, and

(c) Is not likely to have an adverse impact on safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061998C]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Sea Scallop Management

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS announces its decision not to undertake the rulemaking

requested in a petition submitted by David Frulla (Petitioner) of Brand, Lowell & Ryan on behalf of the Fisheries Survival Fund. Petitioner petitioned the Secretary of Commerce (Secretary) to determine where scallops are large in size and number and where primary groundfish are more susceptible to scallop gear in the Georges Bank Closed Area the Petitioner believes that this combination of information would optimize scallop fishing while still maximizing recovery of primary groundfish stocks. After the data have been collected, the Petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. To balance these openings, the Petitioner proposed to close some currently open areas. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and the progress being made on this management issue by the New England Fishery Management Council (Council).

FOR FURTHER INFORMATION CONTACT: Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713-2344, or Mark R. Millikin, (301) 713-2344.

SUPPLEMENTARY INFORMATION: On June 30, 1998 (63 FR 35560), NMFS issued a notice of receipt of petition for rulemaking submitted by the Petitioner on behalf of the Fisheries Survival Fund. The petition included a request that an experimental fishery be conducted to determine where sea scallops that are large in number and size might exist in the Georges Bank Closed Area. Also, when the data have been collected, the petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. These openings could be balanced by closing some currently open areas. The comment period for this notice of receipt of petition ended on August 31, 1998. NMFS announced that it was reopening the public comment period for this petition for rulemaking in the **Federal Register** from September 9, 1998, through October 9, 1998 (63 FR 48167; September 9, 1998). This reopening of the public comment period was in response to requests during the initial 60-day comment period.

Public Comments Received

Nine commenters support taking emergency action to reopen portions of the Closed Area on Georges Bank to scallop harvest on a rotational basis because it would have immediate economic benefits to the sea scallop industry. Six commenters opposed

taking Secretarial emergency action as described in the petition for rulemaking based on concerns related to one or more of the following: Groundfish bycatch, gear conflict, and habitat issues. Some of the commenters opposing the petition for rulemaking felt that the Council's open forum process is the best vehicle to ensure that all relevant issues are adequately addressed and an opportunity for public comment is provided.

Before this petition for rulemaking was received, NMFS began working with researchers from the Center for Marine Science and Technology of the University of Massachusetts Dartmouth and the Virginia Institute of Marine Science on a collaborative experimental fishery in Closed Area II of Georges Bank to evaluate, on a limited basis, areas of abundance of sea scallops (in number and size), rates of bycatch of groundfish, and habitat considerations. The experimental fishery was conducted from August 28, 1998, through October 5, 1998, and the results are currently being evaluated.

Amendment 7 to the Fishery Management Plan for Atlantic Sea Scallops was approved by NMFS on February 18, 1999, and contains a measure that allows the Council to implement framework action to establish and modify closed areas. Therefore, this measure can be used to implement rotational area openings and closures. The Council held the first of two Council meetings on February 24-25, 1999, scheduled to consider short-term framework options for scallop vessels to gain access to scallops in some groundfish closed areas as soon as possible. These framework actions are Frameworks 11 and 29 to the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMP), respectively. If approved, the actions could be effective this summer. These framework actions would be followed by a more comprehensive FMP amendments to fully address a rotational harvest strategy of opening and closing areas of to scallop fishing.

NMFS believes that the public should be given an opportunity to participate in rulemaking to address the complex issues surrounding reopening portions of closed areas, including: economic needs in the sea scallop fishery, safeguarding against further overfishing of sea scallops, bycatch of juvenile groundfish, critical habitat concerns for sea scallops and groundfish, and possible conflicts between mobile and fixed gear. Therefore, the Petitioner's request for emergency action to reopen portions of Georges Bank Closed Areas to sea scallop harvest is denied at this