the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 431

Environmental protection, Paper and paper products industry, Waste treatment and disposal, Water pollution control.

Dated: March 8, 2000.

J. Charles Fox,

Assistant Administrator for Water.

PART 431—[REMOVED]

Accordingly under the authority of Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the ''Act''); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Public Law 92–500; 91 Stat. 1567, Public Law 95–217, 40 CFR part 431 is removed and reserved.

[FR Doc. 00–6975 Filed 3–20–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 355

[Docket No. FMCSA–98–4878 (formerly FHWA Docket No. FHWA–98–4878)]

RIN 2126–AA40 (formerly RIN 2125–AE46)

Motor Carrier Safety Assistance Program

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

ACTION: Final rule.

SUMMARY: The FMCSA is revising the Motor Carrier Safety Assistance Program (MCSAP) to comply with the congressionally-mandated provisions of the Transportation Equity Act for the 21st Century (TEA–21). This action broadens the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. These rules will now 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. These rules provide States greater flexibility in designing programs to address national and State goals for reducing the number and severity of commercial motor vehicle (CMV) accidents. This action also includes conforming amendments to the regulations on compatibility of State laws and regulations affecting interstate motor carrier operations.

DATES: The effective date of this rule is April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. F. Daniel Hartman, National Safety Programs Division, MSP–10, (202) 366–9579, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice 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 modem and suitable communications software from the U.S. Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at URL: *http://www.nara.gov/fedreg* and from the U.S. Government Printing Office's databases at URL: *http://www.access.gpo.gov/nara.*

Creation of New Agency

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (see 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) established the Federal Motor Carrier Safety Administration (FMCSA) as a new operating administration within the Department of Transportation, effective January 1, 2000 (Public Law 106–159, 113 Stat. 1748, December 9, 1999). The Secretary therefore rescinded the motor carrier authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Centers and Division (*i.e.*, State) Offices have been transferred without change to the FMCSA Service Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FHWA and continued under the OMCS will be completed by the FMCSA.

Background

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant-in-aid program. The MCSAP was first authorized in the Surface Transportation Assistance Act of 1982 (STAA)(Public Law 97–424, 96 Stat. 2079, 2154), reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99–570, 100 Stat. 3207, 3207–186), and again in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 31101–31104, as amended). The original authorization contained certain eligibility requirements for financial assistance, including agreement to adopt and enforce safety regulations compatible with the 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 Public Law 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. Section 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.

Summary of TEA–21

The TEA–21 (Public Law 105–178, 112 Stat. 107) was signed into law on June 9, 1998. Section 4003 of the TEA–21 authorized the MCSAP at the following funding levels for 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 revises the purpose of the grant program. The goals and directives outlined in this section closely parallel the concepts and principles of a performance-based program. The changes foster greater coordination and cooperation between State and Federal jurisdictions in improving CMV safety. The changes also give States more flexibility to address their particular safety issues through the MCSAP. Section 4002 of the TEA–21 also sets forth four current program goals:

(1) Investing in activities achieving maximum accident 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.

(4) Advancing promising technologies and safe operating procedures.

Section 4003 of the TEA–21 has expanded 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 simplifies enforcement efforts 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. The hazardous materials portion of the definition of ''commercial motor vehicle'' in 49 U.S.C. 31101 is also revised 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 input (e.g., the number of vehicles inspected) to focusing program effort on outcomes (e.g., reductions in CMV accidents, fatalities, and injuries). States have reacted very positively to this change and all participating MCSAP jurisdictions have implemented performance-based programs.

Section 4003 also revised the grant eligibility criteria and the State plan format to require references to ''improving'' CMV safety and ''hazardous materials'' enforcement. This section emphasizes that the principal goal of the MCSAP is not simply to enforce regulations but to encourage 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 requirements 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 codify and reinforce longstanding best practices of State CMV safety programs.

The legislation expands the existing requirement that State agencies coordinate the Commercial Vehicle Safety Plans (CVSP), originally called the State Enforcement Plan (SEP), 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. Code. The January 1, 1994, deadline for SAFETYNET participation, as required by 49 U.S.C. 31102(b)(M), has been deleted 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 requirements 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. The set-asides have been 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 other 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 funding consists 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.

2. Incentive Funds encourage States to improve CMV accident performance and to meet other safety performance criteria.

3. High Priority and Border Activity Funds for States to improve CMV safety and compliance with safety regulations and to carry border CMV safety

programs, enforcement, and other projects.

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

General Discussion of the NPRM

The notice of proposed rulemaking (NPRM) to amend the regulations governing the MCSAP and to request comments was published in the **Federal Register** on March 9, 1999 (64 FR 11414). In the preamble to the NPRM, proposed changes to the regulations were thoroughly explained.

Discussion of Responses to the NPRM

The comment period of the NPRM closed on May 10, 1999. Forty-three comments were received. Of these, thirty-three were from MCSAP agencies, six were from various safety associations, one was from a trucking company, one from a Federal agency, one from the Upper Great Plains Transportation Institute, and one from an individual.

Specific Concerns

Definitions

Four commenters believed that ''large truck'' should be defined.

The FMCSA agrees and, for the purpose of distributing Incentive Funds for reducing the number and rate of large truck-involved fatal accidents, is using the Fatality Analysis Reporting System (FARS) definition of a ''large truck.''

The State of Louisiana supported the revised definition of a CMV.

The term ''performance factor'' has been deleted, since the proposal to adjust the States' basic program funding level by applying a factor based upon a State's reduction in its CMV accident rate has been removed.

While the calculation of ''accident rate'' and ''10-year average accident rate'' were described in detail in the NPRM, those terms were not included in the definitions section. Those definitions have been added. For the purpose of determining States' eligibility under § 350.327(b)(2) Incentive Funds, the definition of ''10-year average accident rate'' has been added to § 350.105. For example, for the FY 2000 distribution:

1. The FMCSA would calculate a State's 10-year average accident rate period from 1987 through 1996. The average 10-year accident rate would be calculated by dividing the number representing the State's aggregated number of large truck-involved fatal crashes as reported in the FARS from 1987 through 1996 by the number representing the State's aggregate vehicle miles traveled (VMT) as reported by the FHWA for the same 10-year period.

2. The FMCSA would then calculate the State's 1997 accident rate by dividing the number of large truck-involved fatal crashes as reported in the FARS by the number representing the State's vehicle miles traveled (VMT) and compare that to the average 10-year accident rate.

3. If a comparison reveals the State's accident rate has increased, the State would not be eligible to receive accident-rate incentive shares for the current funding year since there was no reduction.

4. If a comparison reveals that the accident rate has decreased, the State would be eligible to receive accident-rate incentive shares for the current funding year.

5. If a comparison reveals the State's 1997 accident rate is within the lowest 10 percent of accident rates and the 1997 rate is the same as the State's 10-year average accident rate, the State would be eligible to receive accident rate incentive shares for the current funding year.

6. The calculations in steps 1 through 5 would be repeated in FY 2001 through 2003, adjusting the 10-year period and average and using the most recent calendar year for which data are available for comparison to the 10-year average.

Finally, the term ''crash'' has been replaced by the term ''accident'' throughout the preamble and the rule to more accurately reflect the nature of our CMV safety program.

Basic Program Funds Allocation Formula

While most of the respondents support the performance-based concept, the greatest source of disagreement on the Basic Program Funds allocation formula concerned the new performance factor. Twenty-three different comments suggested that the performance factor be dropped from the formula or that some measure other than accidents be used to determine performance. States believe that the Basic Program Funds should be left intact in order to provide funding continuity from year to year. Most States with a low fatality count were concerned that a single fatal accident could significantly affect the amount of funds received. It was noted that using the fatal accident rate both to penalize a State's receipt of Basic Program Funds and also to fail to reward a State with Incentive Funds appears to be double jeopardy. States believed that reducing a State's Basic Program Funds based on fatal accidents, which can be caused by factors not directly controllable by the State's safety programs (*e.g.*, weather), is unfair.

The FMCSA agrees that applying a performance factor to the basic program fund allocation could have a negative effect on MCSAP programs within a State and, therefore, will remove the performance factor (proposed § 350.325) from the Basic Program Funds formula process.

The States of Idaho, Vermont, Wyoming, and Montana, and the American Trucking Associations (ATA), questioned the use of population as a formula factor, stating that population is not a direct measure of commercial vehicle activity.

Because the major goal of the MCSAP is to reduce the number and severity of CMV accidents and population provides an indirect measure of accident exposure, the FMCSA has determined that population is a relevant formula factor and will be retained in the basic formula.

California and New York, two States with large urban populations, recommended the use of lane miles rather than highway road miles.

The FMCSA analyzed the use of lane miles as a potential formula factor and found that it correlated highly with highway road miles. Because of this high correlation and because highway road miles were already an accepted factor, the FMCSA decided that there was no need to change from highway road miles to lane miles.

The States of Idaho and Wyoming recommended the use of CMV miles traveled (CVMT) rather than total VMT in the formula, stating that non-commercial vehicle travel has little to do with CMV safety activities.

The FMCSA considered the use of CVMT as a factor. The CVMT (calculated as the VMT of combination and heavy single-unit trucks) is highly correlated to total VMT but has the disadvantage of requiring additional calculations. In addition, one State does not report VMT data for CMVs. Finally, a majority of fatal accidents involving CMVs also involve other vehicles. As a result, the FMCSA decided to use total VMT as a direct indicator of accident exposure.

Oregon and Montana suggested that highway road miles within federally controlled lands (*e.g.*, those areas controlled by the Bureau of Land Management (BLM)) and any road open to CMVs be included in the mileage factor.

The source of the mileage used in the MCSAP formula is the totals column of Table HM–10 of the FHWA's

publication, ''Highway Statistics.'' [1] This table includes both rural and urban highway road miles as submitted by the States to the FHWA. The FMCSA acknowledges that the exclusion of the BLM road miles from the FHWA's statistics beginning with 1998 could adversely affect CMV safety in States with a significant number of BLM road miles. Since States perform safety tasks on these roads, the FMCSA has decided to use the 1997 FHWA Road Miles calculation through FY 2003.

The Commonwealth of the Northern Mariana Islands and the Government of Guam requested reconsideration of reducing grants to the Territories. The NPRM noted that grants were proposed to be reduced from prior funding levels because Territories had lower population levels, road miles, and VMT and did not report special fuel consumption. These commenters explained that their special geographic situation and taxation system were different from the 50 States, which caused their reporting system to be different. They also asserted that a reduction in funding level would adversely affect their programs.

The FMCSA acknowledges the difference in reporting requirements but significant differences remain between the Territories and the 50 States in terms of population and road miles. With the increased funds authorized by the TEA–21, the FMCSA will add more funding to the Territories (Guam, American Samoa, Northern Mariana Islands, and the Virgin Islands) and hold them closer to their FY 1999 funding level. This amount is fixed at $350,000 and will not change through FY 2003.

The State of Idaho, which has a large percentage of Federal land, suggested using Federal acreage as a formula factor because the building of new roads is restricted within Federal lands, which penalizes the State's ability to increase its total highway mileage.

The FMCSA considered acreage and rejected it because the existence of large land areas, without extensive road miles, simply does not relate to accident potential.

The Owner-Operator Independent Drivers Association (OOIDA) recommended that the number of CMV accidents be used as a formula factor, where the number of accidents is directly proportional to the amount of money received (*i.e.*, States that have more accidents would receive more funding).

The FMCSA considered the possibility of using CMV accidents as a factor in the formula for distribution of Basic Program Funds. Incorporation of CMV accidents was rejected because (1) there is not *currently* a valid source of complete CMV accident data, (2) the four formula factors, as described, apportion funds to those States with the greatest accident exposure, and (3) using accidents as a factor does not place emphasis on accident reduction (a performance goal).

North Carolina suggested that a State's economy should be reconsidered as a formula factor because a booming economy would directly correlate to the number of CMVs traveling in a State.

The FMCSA determined that the use of special fuels (*e.g.*, diesel) was a better measure of CMV activity in a State.

Louisiana suggested using traffic density as a factor.

The FMCSA examined traffic density in detail because it appeared to be a reasonable measure of accident potential. For States that are consistently urban (high traffic density; *e.g.*, Washington, D.C.) or consistently rural (low traffic density; *e.g.*, North Dakota), a measure of traffic density makes sense. For States with a combination of very urban areas and great expanses of rural areas (*e.g.*, Texas), however, the logic of an overall traffic density factor for the entire State fails. Therefore, traffic density will not be incorporated as a factor in the formula.

The State of Illinois asserted that if a performance factor had to be applied to the Basic Program Funds allocation, then strong consideration should be given to adding a comparison of each State to the National accident rate.

Since the performance factor has been deleted, this recommendation is no longer a consideration.

Distribution of Basic Program Funds and Incentive Funds

Ten respondents disagreed with dividing the MCSAP funds into the Basic Program Funds and Incentive Funds by percentages which changed each year (*i.e.*, a 90–10 split in the year 2000; 85–15 split in the year 2001; 80–20 split in the year 2002; and 75–25 split in the year 2003, etc.). While the National Association of Governors' Highway Safety Representatives and the Commercial Vehicle Safety Alliance (CVSA) recommended that the Basic Program Funds not be decreased in order to provide more funding for Incentive Funds, State agencies in New York, Minnesota, and Illinois recommended different percentages for the splits. States commented that the final MCSAP Basic Program Funds distribution should be continued at the States' current levels of funding to encourage enrichment or enhancement of those efforts in areas of greatest safety potential.

After careful consideration of these comments, the FMCSA has adjusted the percentages for dividing the MCSAP funds. The revised percentages are shown in the table below. The MCSAP Basic Program Funds distribution has been increased to provide funding in FY 2000 above the FY 1999 funding amount of $80,000,000, thereby providing a modest growth in the Basic Program Funds through FY 2003. Therefore, the Incentive Funds have been recalculated to begin at 5 percent of the total MCSAP funds available in FY 2001, with an increase of 3 percent per year, with the final percent in FY 2003 at 11 percent.

The MCSIA has provided additional funding for the motor carrier safety grant program. Section 103(b)(1) of the MCSIA increased the amount available in fiscal years 2001, 2002 and 2003 for motor carrier safety grants by $65 million per fiscal year. This amount was reduced by a total of $10 million per fiscal year for FY's 2001 through 2003 to fund the Commercial Motor Vehicle Crash Causation Study (section 224(f), $5 million) and data collection and analysis activities (section 225(f), $5 million) of the MCSIA. Accordingly, the table entitled ''MCSAP Funds Distribution Based on TEA–21 and MCSIA Authorization Levels'' has been revised to reflect a net increase of $55,000,000 per fiscal year in FY's 2001 through 2003 for motor carrier safety grants.

MCSAP Funds Distribution Based on TEA–21 and MCSIA Authorization Levels

Fiscal year	2000	2001	2002	2003
Total MCSAP Funds	$95,000,000	$100,000,000	$105,000,000	$110,000,000

[1] ''Highway Statistics'' is published annually by the Federal Highway Administration. It is available for inspection and copying as prescribed at 49 CFR part 7 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

MCSAP FUNDS DISTRIBUTION BASED ON TEA–21 AND MCSIA AUTHORIZATION LEVELS—Continued

Fiscal year	2000	2001	2002	2003
		55,000,000	55,000,000	55,000,000
		155,000,000	160,000,000	165,000,000
Administrative Takedown*	1,187,500	1,937,500	2,000,000	2,062,500
High Priority Activities	4,750,000	7,750,000	8,000,000	8,250,000
Border Activities	4,750,000	7,750,000	8,000,000	8,250,000
Basic Program Funds	84,312,500	130,684,375 (95%)	130,640,000 (92%)	130,329,375 (89%)
Incentive Funds	0**	6,878,125 (5%)	11,360,000 (8%)	16,108,125 (11%)

* Minimum of 75 percent is dedicated for training State Personnel.
** No Incentive Funds were distributed in fiscal year 2000.

The table entitled ''MCSAP Funds Distribution'' has been removed from proposed § 350.313(d) due to the uncertainty that the annual congressional MCSAP appropriation will be identical to the current authorized funding level.

Incentive Funds Allocation

Eight States and two organizations asserted that the philosophy of rewarding States for cutting down on their accident problem was illogical. They stated that the funds should go to those States with the biggest accident problems in order to deal with those problems.

The objective of the MCSAP is not to distribute funds to the States, the objective is to reduce accidents, injuries, and fatalities. Simply providing more funds to States with increased accidents, injuries and fatalities provides no incentive to improve safety. However, the four-factor formula for allocating Basic Program Funds, while not based on the number of accidents, does provide the greatest amount of funds to those States with the greatest potential for accident problems.

Ten States and one safety advocacy group disagreed with the use of population in the determination of the accident rate and suggested using all VMT rather than population in the calculation. One comment indicated that population is a fair basis for allocating basic funding because population is an indirect measure of accident potential. However, for determining the accident rate, use of VMT was recommended because VMT links fatalities to the actual rate of exposure.

The FMCSA agrees with this set of comments. The definition of fatal-accident rate has been changed to the total number of large truck-involved fatal crashes as reported in FARS for each State divided by the total VMT for each State for all vehicles.

Seven States and the ATA recommended using the number of CMV accidents rather than the number of fatal accidents in determining the accident rate. Various reasons were given. First, the costs of crippling injuries and property damage are significant, even if a fatality is not involved. Second, the difference between a fatal accident and a serious injury accident is often a difference of luck or the physical condition of the victim. Third, a small State may have relatively few fatal CMV accidents and any fluctuation would have profound impacts upon the accident rate. Using the total number of CMV accidents would have less impact from year to year.

The FMCSA basically agrees with all of these arguments. However, the reason for not using all CMV accidents at this point is the lack of a mature, reliable data base. The Motor Carrier Management Information System (MCMIS) accident module will eventually be an excellent source for CMV accident data. At this time, however, not all States are reporting accurate and consistent data to MCMIS. As MCMIS accident reporting by the States improves, the agency may consider using CMV accidents as the safety performance measure for MCSAP funding.

The States of Louisiana, Maryland, South Carolina, and South Dakota, the National Association of Governors' Highway Safety Representatives, and the ATA disagreed with the proposal to compare the ten-year average accident rate with the current one-year accident rate. The ATA suggested comparing a three-year average with the ten-year average to prevent unwarranted penalties because of random annual fluctuations in the number of accidents in States with relatively few fatal accidents.

The purpose of comparing the ten-year average to the current year's fatal accident rate is to give an incentive to reduce accidents. The purpose of comparing one year's accidents and accident rate to the average of the preceding 10 years is to determine the effectiveness of that year's accident reduction strategies. For this reason, the FMCSA will retain the proposed method of calculation.

Massachusetts commented that the definition of accident rates appears to change between the description of Basic and Incentive Funds.

The word ''fatal'' is added to the description of accident rates in §§ 350.317 and 350.327.

The Association of Waste Hazardous Materials Transporters questioned the fairness of allocating MCSAP Incentive Funds based on all CMV-involved fatal accidents and asserted that the accident rates should be derived using the number of accidents attributable to the CMV (based on law-enforcement citations).

The FMCSA does not agree with this recommendation because the issuing of citations as a result of an accident (as recorded in the FARS) does not always provide a complete determination of ''fault.''

Fourteen commenters recommended that the FMCSA not use accident rates for allocation of Incentive Funds. Three reasons were given:

1. An improved accident rate is not always the result of State efforts, and accidents may increase even after a State has put forth its best effort to reduce accidents.

2. States with low numbers of accidents will be penalized by very small changes in the number of accidents, even when the changes may not be statistically significant.

3. States will be penalized for improvements in accident reporting.

To lessen the impact of the accident statistics in the Incentive Funds allocation process, one commenter suggested allotting equal shares to each factor. Another comment was to use positive rather than negative incentive measures (*e.g.*, assign incentive points

for proactive program development plans).

Incentive Funds do not ''penalize'' the States. These are additional funds beyond the Basic Program Funds allocation and serve to reward States which have seen a reduction in the number of fatal accidents or the fatal accident rate and an improvement in other areas. If a State's performance continues to improve, the State will continue to receive Incentive Funds. Proactive program development should result in a reduction in accidents. Reducing accidents is a positive measure.

The State of New York noted that the approach to incentive funding fails to recognize States that have developed successful CMV safety programs. New York commented that ''it is designed to make it relatively easy for states with poorer programs to get significant incentive funding for modest gains even though they are at the bottom of any reasonable comparative national ranking.''

The FMCSA recognizes that States with the best (or lowest) fatal accident rates may have difficulty reducing those rates further, while States with higher accident rates have more room for improvement. To encourage those States with the lowest fatal accident rates who were unable to reduce—but were able to maintain—those outstanding fatal accident rates, three incentive shares will be awarded.

Although comments generally supported the concept of incentive funding, comments from nine States and the CVSA indicated concern that establishing an incentive award for timely upload of CMV accidents may actually have the effect of reducing the completeness and accuracy of the data. These States also maintain that they have no control over the speed with which certain accident data is reported to them, thereby resulting in late reporting to the FMCSA.

We are sympathetic to the States' accident reporting challenges, particularly their dependence on law enforcement agencies outside the lead MCSAP agency jurisdiction, but the collection of complete, accurate and timely accident data is vital to reducing fatalities and accidents. We cannot compromise our safety goals due to a fear that States will not report accident information in order to prevent their timeliness record from suffering. A sufficiently populated accident database provides the CMV accident information necessary to profile high-risk carriers and drivers and establish national policies and regulations that promote safety. More importantly, however, a complete and timely accident database enables the States to evaluate current safety and enforcement programs, to formulate effective future programs, and to allocate resources based upon sound data—elements of an effective performance-based program. As such, the FMCSA will retain timely accident data upload as an incentive element, and will continue to work with the States in seeking ways to improve State-wide accident reporting mechanisms.

In addition, the weighting of the incentive categories has been adjusted to emphasize the importance of fatality reduction compared to other program element improvements.

The States of California, Illinois, Michigan, and New York commented that the proposed method of calculating and distributing incentive award funds failed to reflect the relative size of States' Basic Program Funds. The FMCSA agrees and has modified the formula to weight shares based upon a State's percentage of participation in the Basic Program Funds distribution formula.

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 multiplying the State's percentage of participation in the formula allocation of Basic Program Funds, by the number of shares it has that year, by the dollar value of one share.

Use of FARS Data for the Incentive Funds

Six States commented about using FARS data rather than the office's own SAFETYNET accident data for all accidents to determine incentive shares.

Currently, the FMCSA SAFETYNET Accident Module is not sufficiently populated to be used to distribute funds. The agency is working aggressively with States to record all required CMV accidents in SAFETYNET. As accident data collection improves, the agency can use it as the basis for calculating incentive funding. The FARS is a nationally recognized source of fatal accident data and the most consistent and reliable data source available at this time.

Partial Funding (50 Percent) Basic Program Funds

The States of Florida, Maine, and South Dakota commented that there was no provision in the NPRM for continued partial (50 percent) funding of the MCSAP Basic Program Funds for those States with existing incompatible intrastate regulations outside the Tolerance Guidelines and the FMCSRs. The State of Michigan commented that no State would be eligible for any funding for incompatibility based on § 350.203, and that the FMCSA should amend that section.

Eliminating partial funding from the NPRM for States that currently have incompatible intrastate regulations was an administrative oversight and has been corrected in the final rule under § 350.335. Florida, Maine and South Dakota will continue to receive 50 percent funding of their Basic Program Funds formula allocation until the incompatibilities are removed, and provided no further incompatibilities have been created. However, any State that becomes incompatible, other than the existing three incompatible States, will not be eligible for funding.

The State of Maine (Department of Public Safety) commented on § 350.341(d) of the Tolerance Guidelines prohibiting exemptions to the FMCSRs based upon the distance a motor carrier or driver operates from the work reporting location. Maine has three regulatory variances which exempt from all of Parts 391 and 395, and portions of 396, intrastate carriers, except those transporting Hazardous Materials, whose drivers operate within a 100 air-mile radius of their terminal. Maine stated: ''[I]t is the position of the State of Maine that our exemption does not impact highway safety and that the penalty imposed restricts the ability of the State of Maine to maximize our ability to impact highway safety by limiting activities under the MCSAP Program.''

Maine believes that the FMCSA would circumvent the intent of Congress through administrative rulemaking if § 350.341(d) is adopted. The substance of § 350.341(d) has been part of the Tolerance Guidelines since September 8, 1992. Until the study required by section 4032 of TEA–21 is complete, and a final decision is made, the States of Maine, Florida, and South Dakota will continue to receive 50 percent of their MCSAP Basic Program Funds.

Conditions To Qualify for Basic Program Funds

California commented that the FMCSA did not specifically identify those parts of the FMCSRs that the States are required to adopt or be compatible with in order to qualify for and receive MCSAP funds.

The FMCSA did not intend to extend the scope of required compliance beyond Parts 390 through 397. That is the clear meaning of § 350.201. However, § 350.201(a) has been

rewritten to clarify which parts of the FMCSRs and HMRs must be adopted by the States to qualify for MCSAP funding. This paragraph incorporates exceptions previously found in the ''Conditions for basic grant approval'' and the ''Tolerance Guidelines.''

Maintenance of Effort

Section 103(c) of the MCSIA amends the maintenance of effort required in the ISTEA by changing the base period to fiscal years 1997, 1998, and 1999 for measuring the level of effort. The effect of this change is to greatly increase the level of commercial motor vehicle safety activities that the State must maintain to participate in MCSAP. The intent of the maintenance of effort provision is to ensure that Federal funds supplement State funds and do not replace them. Further, it ensures that States commit to continuing their past efforts in commercial motor vehicle safety activities.

Enforcement of Registration and Financial Responsibility Requirements

Section 207 of the MCSIA amended 49 U.S.C. 31102(B)(1)(R) to read as follows (new material *italicized*): ''(R) ensures that the State will cooperate in the enforcement of registration *requirements under section 13902* and financial responsibility requirements under sections *13906*, 31138, and 31139, and regulations issued thereunder.'' The references to § 13902 (''Registration of motor carriers'') and 13906 (''Security of motor carriers, brokers, and freight forwarders'') merely clarified the meaning of the previous text by identifying the statutory provisions that deal with registration and financial responsibility requirements. Since Sec. 207 did not substantively change subparagraph (R), the FMCSA finds good cause, pursuant to 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act, to incorporate these changes into § 350.201(t) without prior notice and opportunity for comment.

Local Jurisdictions

The State of California, the OOIDA, the National Association of Governors' Highway Safety Representatives, and the CVSA were strongly opposed to local jurisdictions participating in High Priority MCSAP funding.

The FMCSA believes that under very limited circumstances, it may be desirable to fund local agencies' CMV safety program activities. In those cases, the local agency receiving a grant would be held to essentially the same qualification, certification, and administrative requirements as any other MCSAP jurisdiction, and in any event be required to coordinate all activities through the lead MCSAP agency in that State.

Compatibility

Parts of 49 CFR pertaining to the FMCSRs and HMRs which were inadvertently omitted from the NPRM but are in the current part 350, appendix C, have been added to § 350.337. The response to the question found at § 350.337 in the NPRM was not sufficiently clear about the extent to which State laws governing interstate commerce may differ from Federal law and still be compatible. The response has been rewritten to agree with the regulatory adoption requirements and exceptions stated in § 350.201. The FMCSA has added the phrase ''and provide an orderly transition to full regulatory adoption at a later date'' in § 350.341(g). This phrase is in the current Tolerance Guidelines in part 350 and was inadvertently left out of the NPRM. There was no intention of changing the standard for grandfather clauses.

The Wisconsin Motor Carriers Association and the Wisconsin DOT both commented about the addition of the words ''engaged exclusively in intrastate commerce'' with regard to the Tolerance Guidelines in § 350.339. Their comments suggested that this phrase could be interpreted to require any motor carrier that uses the same drivers and vehicles in both interstate and intrastate commerce to be subject only to the U. S. DOT jurisdiction and the FMCSRs rather than allowing those carriers, drivers and CMVs to be subject to State rules when operating on an intrastate basis.

The FMCSA agrees with these comments and has removed the word ''exclusively'' from §§ 350.339, 350.341, and 350.343.

The U.S. Equal Employment Opportunity Commission commented and urged the FMCSA to revise the State waiver standard in § 350.341(h) to be no more restrictive than the newly adopted waiver standards under section 4007 of TEA–21.

The FHWA's interim final rule implementing section 4007, ''Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures,'' [63 FR 67600, December 8, 1998] applies to interstate commerce. As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the FMCSA.

The Tolerance Guidelines in the current part 350 set forth the limited deviations from the FMCSRs allowed for laws and regulations that apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce that are not subject to Federal jurisdiction. Section 350.341(h)(1) describes variances in place prior to the implementation of the requirements of the Surface Transportation Assistance Act of 1982. Presumably, the States who had variances grandfathered under § 350.341(h)(1) ensured that they were based upon appropriate performance standards and had no adverse effect upon safety. Since the driver qualification standard in § 350.341(h)(2) is consistent with the requirements of 49 CFR part 381—Waivers, Exemptions, and Pilot Programs, no change has been made to the Tolerance Guidelines in § 350.341(h)(2).

California commented that participating States should be given latitude to enact regulations and statutes that are compatible with Federal regulations but not identical. The State suggested that the FMCSA should retain the terminology ''having the same effect as'' in lieu of the word ''identical.''

It was an administrative oversight to leave out the phrase ''having the same effect as.'' We have added it to the language in § 350.105 only for the FMCSRs. The word ''identical'' will also remain.

California commented that under § 350.345, a State should be able to apply for additional variances from the Tolerance Guidelines and have those variances apply to interstate commerce.

California's request would undermine the congressional intent and purpose of the MCSAP to ensure uniformity of regulations and enforcement among the States. Since the inception of the program, the agency has required each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. Safety standards in one State must be compatible with the requirements in another State in order to foster a uniform national safety environment. The purpose of variances is to set forth the limits within which a State can deviate from the FMCSRs and still be considered compatible for funding purposes under 49 CFR 350. But these variances are applicable only to those State rules and regulations where the U.S. Department of Transportation does not have jurisdiction, namely intrastate commerce. Variances are not available

for State rules and regulations governing interstate commerce.

Commercial Vehicle Safety Plan (CVSP)

Nine comments dealt with the CVSP.

Nevada was opposed to including a safe inspection location requirement in the State Certification. Nevada indicated most States have inspection sites that are adequate or barely adequate for CMV inspections and some are not safe under all weather conditions and certain times of the day.

The OOIDA and the ATA supported the requirement.

Since section 4003(c)(8) of TEA–21 requires that States ensure roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel as a condition for Basic Program Funds, that requirement must be part of the State Certification. The language has been revised to require that the MCSAP agency have departmental policies stipulating that roadside inspections are conducted at locations adequate to protect the safety of drivers and enforcement personnel.

The FMCSA is adding three items to the State Certification to be consistent with the conditions a State must meet to qualify for Basic Program Funds: (1) The State will participate in SAFETYNET and ensure information is exchanged with other States in a timely manner; (2) The State will ensure that requirements relating to the licensing of CMV drivers is enforced, including checking the status of commercial driver's licenses (CDL); and (3) The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

Nevada and Wisconsin commented that the States need clarification regarding the requirement that the CVSP, data collection, and information systems be coordinated with State highway safety programs under 23 U.S.C. 402.

This requirement is neither another layer of approval for the CVSP nor a means to validate the States' SAFETYNET data with section 402 data. The requirement to coordinate a State's CVSP (formerly SEP) with the State highway safety plan under 23 U.S.C. 402 has always been a component of the State Certification. Section 4003(c)(2) of TEA–21 merely expands the requirement to also include the coordination of data collection and information systems with State highway safety programs under title 23, U.S. Code. Certification item 12 has been revised to reflect that mandate. The intent of this congressional direction is to ensure close coordination of State highway safety programs. State highway safety programs aimed at passenger cars and drivers and those aimed at CMVs and CMV drivers should complement each other to the fullest possible extent. Both the section 402 State and community grant program and MCSAP are data-driven and performance-based programs designed to reduce accidents, injuries, and fatalities. The Congress intends for these programs to share data, information, and program plans to reduce fatalities. The States must certify that information exchange or coordination of safety plans was accomplished.

The OOIDA, Advocates for Highway and Auto Safety (AHAS), and the States of Iowa and Maryland commented about the timely and proper correction of all CMV safety violations. The OOIDA commented that there are no standards which define the ''timely and proper'' correction of CMV violations. Iowa commented that the term ''all'' should be eliminated. The AHAS expressed its concern for eliminating ''the prior regulatory requirement that states enact and enforce an out-of-service (OOS) verification program in favor of a 'certification acceptance' that the States have a process in place for timely and proper correction of all CMV safety violations noted during inspections.'' Maryland is concerned that the State has no control over interstate carriers not domiciled in their State.

Section 4003(c)(4) of TEA–21 eliminates the current statutory requirement that the States establish an out-of-service verification program and mandates that the States ''will establish a program to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection* * *.'' This mandate does not preclude the States from continuing their out-of-service verification programs. This is not a new requirement for the States. Section 350.9(p) currently requires the correction of all violations cited on roadside inspection reports. States are also required to have a tracking system in place to ensure that motor carriers certify the corrections of safety violations and that inspection reports are returned to the issuing agency (§ 350.13(b)(4)(v)).

Standards to define ''timely and proper'' corrections of CMV violations are found in 49 CFR 396.9(d)(2) which states: ''Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.'' Additionally, 49 CFR 396.11(c) states that, ''prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would likely affect the safety of operation of the vehicle.'' Section 396.9 also requires that a motor carrier shall certify that all repairs have been made and return the signed inspection form to the issuing agency within 15 days following the inspection. Furthermore, the North American Uniform Out-of-Service Criteria states that ''violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispatch.''

The Upper Great Plains Transportation Institute provided comments to the docket on suggested revisions for § 350.213, ''What must a CVSP include.'' The FMCSA agrees that the CVSP guidelines should be consistent with the Performance-Based MCSAP training. The following paragraphs have been amended: ''(a) A statement of the State agency goal or mission'' is amended to read ''(a) A General overview section that must include the following two items: (1) A statement of the State agency goal or mission.'' Paragraph ''(b)'' is now ''(2)'' under Paragraph ''(a)'' and the phrase ''comprehensive evaluation'' is changed to ''program summary.'' The sentence, ''Evaluation data should measure program progress in one-year increments'' has been deleted and replaced with, ''Data periods used must be consistent from year to year.'' In the next sentence of this paragraph the phrase ''chosen by the State'' is replaced with ''for which the State's data is current.'' The word ''evaluation'' that appears in the next sentence has been changed to ''summary.'' Paragraph (b) has been expanded to include descriptions of the State's activities related to removing impaired CMV drivers from the highways and interdicting controlled substances transported by CMVs (as required by § 350.201(q)) and enforcing registration and financial responsibility requirements (as required by § 350.201(t)). In paragraph (f), now paragraph (e), the second sentence has been replaced with ''Strategies may include education, enforcement, legislation, or technology/infrastructure.'' In paragraph (g), now paragraph (f), the second sentence has been completely deleted. To be consistent with the Performance-Based MCSAP training, a new paragraph (i) has been added. The Performance-Based MCSAP training specifies that each

State specific objective must be evaluated. The new paragraph (i) describes the information the States will discuss in this section of its CVSP. To be consistent with the Performance-Based MCSAP training, paragraphs (n) through (r) have been added to this section. Paragraphs (c) through (m) have been redesignated as paragraphs (b) through (g) and (j) through (m), respectively.

Size and Weight Enforcement

Michigan and Oregon asked for a clarification regarding cost eligibility of size and weight enforcement at fixed sites.

The MCSAP rule on this point has not changed since 1992. To be eligible for reimbursement, (§ 350.29(c)(5)) size and weight enforcement must be conducted at locations other than fixed weight facilities, at specific geographic locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States. These size and weight enforcement activities must be carried out in conjunction with an appropriate North American Standard Inspection and inspection report.

Consolidation of Appendices

This rulemaking incorporates appendices A, B, and C into the regulatory text. The following table shows where each section of the amended regulations appear in the new format:

Old regulation	New 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).
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)	350.345.
350.11(h)	350.335(d).
350.11(i)	350.335(e).
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, 350.327, 350.329.
350.31(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	350.309, 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 (CFSP).
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).
paragraph (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)	Removed.

Conforming Amendments

This action amends various sections of 49 CFR part 355 to conform with changes to the MCSAP and 49 CFR part 350. Under § 355.5, the terms ''compatible/compatibility'' and ''State'' are revised to be consistent with part 350. The acronym ''FMCSRs'' has been added to the definition for ''Federal Motor Carrier Safety Regulations'' and replaces ''FMCSR'' throughout this part. Section 355.21(c) now reflects the requirement that State laws and regulations be identical to the Hazardous Materials Regulations. The term ''Commercial Vehicle Safety Plan (CVSP)'' replaces ''Safety Enforcement Plan (SEP).'' Cross-references to part 350 have been updated.

The FMCSA has eliminated the last two sentences under the paragraph titled ''Definitions'' in Appendix A to Part 355—Guidelines for the Regulatory Review. States must continue to ensure that definitions of terms used in their laws and regulations are consistent with FMCSR definitions. We have simply removed the example term ''commercial motor vehicle.'' An interim final rule ''Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle; Interim Final Rule'' published on September 3, 1999, at 64 FR 48510 revised the CMV definition under § 390.5 to cover ''vehicles designed or used to transport more than 8 passengers (including the driver) for compensation.'' But the action exempts the operation of these small passenger-carrying vehicles from all of the FMCSRs for 6 months to allow time for the completion of a separate rulemaking action also published on September 3, 1999, at 64 FR 48518. Revising appendix A to reflect the new CMV definition is premature and potentially confusing to the States.

Rulemaking Analyses and Notices

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of DOT regulatory policies and procedures. The revisions to the FMCSRs will not cause an annual impact on the economy of over $100 million, and they will not adversely affect a sector of the economy in a material way. The changes will 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 which directed the FMCSA to amend its regulations pertaining to the MCSAP. This final rule broadens the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. It revises the MCSAP funding distribution formula, creates a new incentive funding program, and requires 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 FMCSA 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 FMCSA 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 changes merely implement TEA–21 provisions pertaining to the MCSAP affecting only States and local jurisdictions. This rule provides a process for making high priority activity and border activity funds available to local jurisdictions as well as MCSAP agencies. The basic conditions for local agencies to qualify for these funds are consistent with the conditions local agencies must now follow to receive funds through the MCSAP agency. Local agencies will not be required to participate unless they find it is in their best interest. The number of local agencies that would receive direct funding will be minimal since the FMCSA will provide grants directly to local agencies only where it is not possible to work through the lead MCSAP agency. Therefore, the FMCSA 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 rule does 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. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in acordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. The changes in this rule 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 changes. Nothing in this document directly preempts any State law or regulation. 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

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. In its March 9, 1999, notice of proposed rulemaking (NPRM) titled ''Motor Carrier Safety Assistance Program (MCSAP), the agency stated that this action might increase the number of respondents in the MCSAP information collection (OMB Control No. 2126–0010). The

agency has subsequently determined that the number of respondents would not change as a result of this rulemaking, and therefore, is not requesting any revisions to the currently approved collection which will expire on March 31, 2001. The NPRM specifically solicited comments regarding the information collections imposed by this action. The comments that were received are being addressed as a program element of the MCSAP and will not result in any changes to this information collection.

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 will 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

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers.

49 CFR Part 355

Administrative practice and procedure, Federal-State relations, Grant programs, Hazardous materials transportation.

Issued on: March 14, 2000

Julie Cirillo,

Acting Deputy Administrator.

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

1. Part 350 is revised to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Subpart A—General

Sec.

Subpart B—Requirements for Participation

Subpart C—Funding

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

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

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure the Federal Motor Carrier Safety Administration (FMCSA), 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 What definitions are used in this part?

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

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

Agency means Federal Motor Carrier Safety Administration.

Administrative Takedown Funds means funds deducted by the FMCSA 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.

Administrator means Federal Motor Carrier Safety Administrator.

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

Border Activity Funds means funds provided to States, local governments, and other persons carrying out programs, activities, and projects relating to CMV 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 characteristics:

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

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

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

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

Compatible or *Compatibility* means State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs. State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under § 350.341.

High Priority Activity Funds means funds provided to States, local governments, and other persons carrying out activities and projects that directly support the MCSAP, are national in scope in that the successful activity or project could potentially be applied in other States on a national scale, and improve CMV safety and compliance with CMV safety regulations. Up to 5 percent of total MCSAP funds are available for these activities.

Incentive Funds means funds awarded to States achieving reductions in CMV involved fatal accidents, CMV fatal accident rate, or meeting specified CMV safety program performance criteria.

Large truck means a truck over 10,000 pounds gross vehicle weight rating including single unit trucks and truck tractors (FARS definition).

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

§ 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 Mariana Islands, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from the FMCSA. 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.

(e) Data collection.

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

Traffic enforcement means enforcement activities of State or local officials, including stopping CMVs operating on highways, streets, or roads for violations 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, traffic enforcement must include an appropriate North American Standard Inspection of the CMV or driver or both prior to releasing the driver or CMV for resumption of operations.

Subpart B—Requirements for Participation

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

Each 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 (49 CFR parts 390–397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171–173, 177, 178 and 180), except as may be determined by the Administrator to be inapplicable to a State enforcement program.

(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 the State's performance.

(c) Designate, in its State 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 including 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 motor carrier and highway hazardous materials safety enforcement, eligible for funding under this part, at a level at least equal to the average expenditure for Federal or State fiscal years 1997, 1998, and 1999.

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

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

(i) Adopt and use the reporting standards and forms required by the FMCSA to record work activities performed under the CVSP.

(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 United States Code (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 the national program elements listed in § 350.109, including the following three activities:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of 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 drivers' licenses (CDL).

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

(t) Enforce registration requirements under 49 U.S.C. section 13902 and 49 CFR part 356 and financial responsibility requirements under 49 U.S.C. sections 13906, 31138 and 31139 and 49 CFR part 387.

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

(v) Ensure that MCSAP agencies have policies that stipulate roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

§ 350.203 [RESERVED]

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

(a) The lead agency, designated by the Governor, must submit the State's CVSP to the Motor Carrier State Director, FMCSA, on or before August 1 of each year.

(b) This deadline may, for good cause, be extended by the 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 FMCSA will notify the 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, the State will have 30 days from the date of the notice to modify and resubmit the plan.

(c) Disapproval of a resubmitted plan is final.

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

§ 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 execute a State Certification as described in § 350.211.

(b) The State must submit the State 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 that bears on the items contained in § 350.201 of this subpart.

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

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

I (name), (title), on behalf of the State (or Commonwealth) of (State), as requested by the Administrator as a condition of approval of a grant under the authority of 49 U.S.C. 31102, as amended, do hereby certify as follows:

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 Standard Inspection procedure, 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 FMCSA on request.

6. The State has uniform reporting requirements and uses FMCSA 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 State or Federal fiscal years 1997, 1998, and 1999. These expenditures must cover at least the following four program areas, if applicable:

(a) Motor carrier safety programs in accordance with 49 CFR 350.301.

(b) Size and weight enforcement programs.

(c) Traffic safety.

(d) Drug interdiction enforcement programs.

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

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

11. The State will ensure it has a program for timely and appropriate correction of all violations discovered during inspections conducted using MCSAP funds.

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

13. The State participates in SAFETYNET and ensures information is exchanged with other States in a timely manner.

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

15. Ensure that MCSAP agencies have departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

16. The State will ensure that requirements relating to the licensing of CMV drivers are enforced, including checking the status of CDLs.

Date _____

Signature _____

§ 350.213 What must a State CVSP include?

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

(a) A general overview section that must include the following two items:

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

(2) A program summary of the effectiveness of the prior years' activities in reducing CMV accidents, injuries and fatalities, and improving driver and motor carrier safety performance. Data periods used must be consistent from year to year. This may be calendar year or fiscal year or any 12-month period of time for which the State's data is current. The summary must show trends supported by safety and program performance data collected over several years. It must identify safety or performance problems in the State and those problems must be addressed in the new or modified CVSP.

(b) A brief narrative describing how the State program addresses the national program elements listed in § 350.109. The plan must address these elements even if there are no planned activities in a program area. The rationale for the resource allocation decision must be explained. The narrative section must include a description of how the State supports the three activities identified in § 350.201(q):

(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.

(4) Activities to enforce registration requirements under 49 U.S.C. 13902 and 49 CFR part 365 and financial responsibility requirements under 49 U.S.C. 13906, 31138 and 31139 and 49 CFR part 387.

(c) A definitive problem statement for each objective, 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.

(d) Performance objectives, stated in quantifiable terms, to be achieved through the State plan. Objectives must 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).

(e) Strategies to be employed to achieve performance objectives. Strategies may include education, enforcement, legislation, use of technology and improvements to safety infrastructure.

(f) Specific activities intended to achieve the stated strategies and objectives. Planned activities must be eligible under this program as defined in §§ 350.309 and 350.311.

(g) Specific 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.

(h) 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.

(i) An objective evaluation that discusses the progress towards individual objectives listed under the ''Performance Objectives'' section of the previous year's CVSP and identifies any safety or performance problems discovered. States will identify those problems as new objectives or make modifications to the existing objectives in the next CVSP.

(j) A budget which supports 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 and 350.309.

(k) A budget summary form including planned expenditures for that fiscal year and projected number of activities in each national program element, except data collection.

(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.

(n) Executed State Certification as outlined in § 350.211.

(o) Executed MCSAP–1 form.

(p) List of MCSAP contacts.

(q) Annual Certification of Compatibility, § 350.331.

(r) State Training Plan.

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

(a) If a State is not performing according to an approved plan or not adequately meeting conditions set forth in § 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) The State will have 30 days from the date of the notice to reply. The reply must address the deficiencies or incompatibility cited in the notice and provide documentation as necessary.

(c) After considering the State's reply, the Administrator will make a final decision.

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

(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) The State must maintain the average aggregate expenditure (monies spent during the base period of Federal or State fiscal years 1997, 1998, and 1999) of State funds for motor carrier and highway hazardous materials safety enforcement purposes, in the year in which the grant is sought.

(b) Determination of a State's level of effort must not include the following three things:

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

(2) State matching funds.

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

(c) The State 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. It 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 FMCSA 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 the 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 Mariana Islands.

§ 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 listed 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 North American Standard Inspection and inspection report:

(1) Enforcement of size and weight regulations conducted at locations other than fixed weight facilities, at specific geographical locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at 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. The eligibility of specific items is subject to review by the FMCSA. The following six types of expenses are eligible for reimbursement:

(a) Personnel expenses, 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 that are 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). 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 appropriated 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 appropriated 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 § 350.323 of this part,

(ii) As Incentive Funds in accordance with § 350.327 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. The FMCSA will 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 MCSAP lead agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

§ 350.315 How may Basic Program Funds be used?

Basic Program Funds may be used for any eligible activity or item consistent with §§ 350.309 and 350.311.

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

Incentive Funds are monies, in addition to Basic Program Funds, provided to States that achieve reduction in CMV-involved fatal accidents, CMV fatal accident rate, or that meet specified CMV safety performance criteria. Incentive Funds may be used for any eligible activity or item consistent with §§ 350.309 and 350.311.

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

(a) The FMCSA 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 FMCSA, to States, local governments, and other organizations that use and train qualified officers and employees in coordination with State safety agencies.

(c) The FMCSA 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?

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

(b) These funds will be allocated, at the discretion of the FMCSA, to States,

local governments, and other organizations that use and train qualified officials and employees in coordination with State safety agencies. The FMCSA 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) 1997 Road miles (all highways) as defined by the FHWA.

(2) All vehicle miles traveled (VMT) as defined by the FHWA.

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

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

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

TABLE TO § 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	$350,000 (fixed amount)	

§ 350.325 [Reserved]

§ 350.327 How may States qualify for Incentive Funds?

(a) A 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 large truck-involved fatal accidents.

(2) Reduction of large truck-involved fatal accident rate or maintenance of a large truck-involved fatal accident rate that is among the lowest 10 percent of such rates of MCSAP recipients.

(3) Upload of CMV accident reports in accordance with current FMCSA policy guidelines.

(4) Verification of CDLs during all roadside inspections.

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

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

(1) Five shares will be awarded to States that reduce the number of large truck-involved fatal accidents for the most recent calendar year for which data are available when compared to the 10-year average number of large truck-involved fatal accidents ending with the preceding year. The 10-year average will be computed from the number of large truck-involved fatal crashes, as reported by the FARS, administered by the National Highway Traffic Safety Administration (NHTSA).

(2) Four shares will be awarded to States that reduce the fatal-accident rate for the most recent calendar year for which data are available when compared to each State's average fatal accident rate for the preceding 10-year period. States with the lowest 10 percent of accident rates in the most recent calendar year for which data are available will be awarded three shares if the rate for the State is the same as its average accident rate for the preceding 10-year period.

(3) Two shares will be awarded to States that upload CMV accident data within FMCSA policy guidelines.

(4) Two shares will be awarded to States that certify their MCSAP inspection agencies have departmental policies that stipulate CDLs are verified, as part of the inspection process, through Commercial Driver's License Information System (CDLIS), National Law Enforcement Tracking System (NLETS), or the State licensing authority.

(5) Two shares will be awarded to States that upload CMV inspection reports within current FMCSA policy guidelines.

(c) The total of all States' shares awarded 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 multiplying the State's percentage participation in the formula allocation of Basic Program Funds, by the number of shares it received 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. A State must submit the required certification as part of its CVSP or as a separate document.

§ 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, as applicable.

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

(1) Prepare a proposal in accordance with § 350.213, as applicable.

(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 that your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal.

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

(5) Agree to fund up to 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 FMCSA to record work activities to be performed under the proposal.

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

(9) Certify participation in national 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) A State must review any new 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 the review determines that the new law or regulation is incompatible with the FMCSRs and/or HMRs, the State must immediately notify the Motor Carrier State Director.

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

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

(2) A certification, executed by the 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.

(d) As soon as practical after the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs, but no later than three years after that date, the 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 State 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) A State must identify any law or regulation that is not the same as the corresponding Federal regulation and evaluate it in accordance with the table to this section as follows:

TABLE 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
(1) Yes			Compatible—Interstate and intrastate commerce enforcement authorized.
(2) No	Intrastate		Refer to § 350.341
(3) No	Interstate	Less stringent	Enforcement prohibited.
(4) 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 (See 49 CFR Part 355).

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

(a) A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) but enacts a law or regulation which results in an incompatible rule will not be eligible for Basic Program Funds nor Incentive Funds.

(b) A State that fails to adopt any new regulation or amendment to the FMCSRs or HMRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds.

(c) Those States with incompatible laws or regulations pertaining to intrastate commerce and receiving 50 percent of their basic formula allocation on April 20, 2000 will continue at that level of funding until those incompatibilities are removed, provided no further incompatibilities are created.

(d) Upon a finding by the FMCSA, 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 FMCSA may initiate a proceeding under § 350.215 for withdrawal of eligibility for all Basic Program and Incentive Funds.

(e) 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.

§ 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?

States are not required to adopt 49 CFR parts 398 and 399, subparts A through E and H of part 107, and §§ 171.15 and 171.16, as applicable to either interstate or intrastate commerce.

§ 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 in intrastate commerce and not subject to Federal jurisdiction.

§ 350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?

(a) A State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the GVW, GVWR, GCW, nor GCWR of the vehicle equals or exceeds 11,801 kg (26,001 lbs.). However, a State may not exempt a CMV from such laws or regulations if the vehicle:

(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 applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed (*e.g.,* for-hire, private, etc.).

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

(d) State laws and regulations applicable to intrastate commerce 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 extent of allowing the following:

(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 of age.

(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 and provide an orderly transition to full regulatory adoption at a later date.

(h) Driver qualifications:

(1) Intrastate drivers who do not meet the physical qualification standards in 49 CFR 391.41 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 variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the variances are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

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

The FMCSA strongly discourages exemptions 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 exemption 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 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 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 FMCSRs?

Any State may apply to the Administrator for a variance from the FMCSRs for intrastate commerce. 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.

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

PART 355—[AMENDED]

2. Revise the authority citation for 49 CFR part 355 to read as follows:

Authority: 49 U.S.C. 504 and 31101 *et seq.*; 49 CFR 1.73.

3. Amend § 355.5 by revising the definitions of ''compatible or compatibility,'' ''Federal Motor Carrier Safety Regulations,'' and ''State''; by adding a definition of ''Federal Hazardous Materials Regulations''; and by placing the definitions in alphabetical order, to read as follows:

§ 355.5 Definitions.

* * * * *

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 the HMRs or have the same effect as the FMCSRs; and that State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under §§ 350.341, 350.343, and 350.345 of this subchapter.

Federal Hazardous Materials Regulations (FMHRs) means those safety regulations which are contained in parts 107, 171–173, 177, 178 and 180, except part 107 and §§ 171.15 and 171.16.

Federal Motor Carrier Safety Regulations (FMCSRs) means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

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

4. Revise § 355.21(c) to read as follows:

§ 355.21 Regulatory review.

* * * * *

(c) *State review.* (1) The State shall determine which of its laws and regulations pertaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations. With respect to any State law or regulation which is not the same as the FMCSRs (FHMRs must be identical), the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSRs in that it is more restrictive or places a greater burden on any entity subject to its provisions.

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSRs, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSRs, the guidelines for participation in the Motor Carrier Safety Assistance Program in §§ 350.341, 350.343, and 350.345 of this subchapter shall apply.

5. Revise § 355.23 to read as follows:

§ 355.23 Submission of results.

Each State shall submit the results of its regulatory review annually with its certification of compliance under § 350.209 of this subchapter. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the Commercial Vehicle Safety Plan (CVSP). The State shall include copies of pertinent laws and regulations.

6. Amend appendix A to part 355 by revising the paragraph entitled ''**Definitions**'' and by revising the heading to the paragraph ''**Hours of Service**'' and placing them in alphabetical order, to read as follows:

Appendix A to Part 355—Guidelines for the Regulatory Review

* * * * *

DEFINITIONS

Definitions of terms must be consistent with those in the FMCSRs.

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HOURS OF SERVICE OF DRIVERS

* * * * *

[FR Doc. 00–6819 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713189–9335–02; I.D. 060899B]

RIN 0648–AK79

Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

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

ACTION: Final rule; delay of effectiveness.

SUMMARY: NMFS delays the effective date of a final rule published January 11, 2000, from March 15, 2000, until March 27, 2000. The final rule was to have been effective February 10, 2000; however, its effectiveness was previously delayed until March 15, 2000. The final rule will implement approved management measures for the spiny dogfish fishery, as contained in the Spiny Dogfish Fishery Management Plan (FMP). This action is being taken in order to provide the Mid-Atlantic and New England Fishery Management Councils (Councils) with the opportunity to come to an agreement on how to proceed with implementation of the FMP. If the Councils have not reached an agreement by March 27, 2000, NMFS will assess the situation to determine the appropriate course of action to take at that time.

DATES: The effective date of the final rule implementing the Spiny Dogfish Fishery Management Plan (published on January 11, 2000, at 65 FR 1557) and whose effectiveness was delayed until March 15, 2000 (65 FR 7460, February 15, 2000) is further delayed until March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Pearson, Fishery Policy Analyst, at 978–281–0279.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead. A Notice of Availability for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. NMFS made the decision to partially approve the FMP on September 29, 1999. A final rule to implement the FMP was published in the **Federal Register** January 11, 2000 (65 FR 1557), to be effective on February 10, 2000. A delay in effectiveness of the final rule was filed on February 10, 2000, and published on February 15, 2000 (65 FR 7460), which made the effective date of this rule March 15, 2000. The final rule will now be effective March 27, 2000.

Dated: March 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6809 Filed 3–15–00; 3:29 pm]

BILLING CODE 3510–22–F