



U.S. Department  
Of Transportation

Federal Motor Carrier  
Safety Administration

# Memorandum

Subject: Guidelines for states in establishing a  
Maintenance of Effort (MOE)  
for Border Enforcement Grants (BEG)

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In Reply Refer To: MC-ESB

To: Field Administrators  
Division Administrators (ME, NH, VT, NY, MI, MN, ND, MT, ID, WA, AK, CA, AZ,  
NM, and TX)

The purpose of this memorandum is to provide guidance to States and State political subdivisions applying for FY 2006 Border Enforcement Grant (BEG) Funding. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides that a BEG may be made *“only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State or the Federal Government ending before October 1, 2005, whichever the State designates.”*

The following policy establishes guidance for BEG applicants for the calculation of the maintenance of effort (MOE) as required by SAFEATEA-LU. Please provide this guidance to your State partners.

If you have any questions on this issue, please contact Milt Schmidt, Office of Safety Programs, North American Borders Division (MC-ESB), 518-431-4239, extension 262.

## PURPOSE

The purpose of developing MOE guidelines is to assist States, and political subdivisions of States, in calculating the MOE for the Border Enforcement Grant programs.

## **HISTORY**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provided authority for the border enforcement grants for FY 2006 through FY 2009. The Secretary may provide funding under this program to an entity or State that shares a land border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects. For the purposes of the MOE calculation, a “State” includes all political subdivisions of the State.

Prior to SAFETEA-LU, funding for border enforcement activities under other FMCSA border enforcement grant programs did not require an MOE. BEG funding in FY 2004 and FY 2005 was 100 percent federal funds.

The BEG program provides funding to assist the States and entities in carrying out their responsibilities of ensuring foreign and international motor carriers and drivers, operating within their jurisdiction, are in compliance with all federal and state commercial motor vehicle requirements.

The intent of the MOE is to ensure States use Federal BEG funds to increase its border commercial motor vehicle safety programs and related enforcement activities and projects.

## **GUIDANCE FOR DETERMINING THE MOE**

### **Criteria for calculating MOE:**

The FMCSA has established the following principles for calculating the state’s BEG MOE:

1. The MOE is specific to the State agency that is requesting BEG funding. Activities of non-BEG State agencies should not be included in the calculation of the MOE.
2. The MOE is specific to BEG-eligible activities. If a State is performing border commercial motor vehicle safety activities that are not eligible for BEG funding, those activities should not be included in the calculation of the MOE.
3. The MOE is specific to the type of activity that the State will conduct under its BEG plan. For example, if a State conducts only driver license checks with BEG funding, expenditures for other BEG-eligible activities that the State may perform (driver/vehicle inspections, etc.) using other non-federal sources of funding, should not be included in the MOE calculation.
4. Expenditures included in the State’s Motor Carrier Safety Assistance Program (MCSAP) MOE should not be included in the BEG MOE calculation.
5. Only non-Federal funds should be included in the BEG MOE calculation.

**Process:**

1. The State must designate whether it will use the two Federal fiscal years or the two State fiscal years ending before October 1, 2005 for the purposes of calculating a MOE.
2. The State will calculate its BEG MOE consistent with the principles listed above.
3. The State must certify to the FMCSA (Attachment) that it will maintain its MOE expenditures consistent with the requirements of SAFETEA-LU every year it applies for a BEG. The certification, signed by an appropriate State official, must be submitted with the application for funding.

**Example:**

A State agency requests BEG funding to conduct education and outreach seminars in Mexico for Mexican motor carriers and drivers that operate or intend to operate in the United States. The State agency is also the lead MCSAP agency and conducts driver/vehicle and HM checks under the MCSAP at the border. In FY 2005 the State agency conducted three education and outreach seminars in Mexico at a total cost of \$15,000 using State funds, and 20,000 border driver and vehicle checks at the border at a total cost of \$2,000,000 using MCSAP funds. No education and outreach seminars were conducted in FY 2004. In FY 2006 the State agency requested BEG funding for eight education and outreach seminars in Mexico and for 2,000 commercial vehicle inspections at the border port of entry. The total cost to conduct these expenditures is estimated at \$100,000. The State operates on the same fiscal year as the federal government.

In calculating its BEG MOE the State agency should only consider the expenditures associated with conducting the “type of activity” for which the State is requesting funding, in this case the education and outreach seminars. Because the 20,000 commercial vehicle inspections in FY 2005 were conducted under the MCSAP, the cost associated with that activity must not be included in the FY 2006 BEG MOE calculation. However, the cost associated with the educational and outreach seminars for Mexican motor carriers conducted in FY 2005 were paid for with State money. Because the State is requesting BEG funding for FY 2006 education and outreach seminars (same “type of activity”), those costs must be included in the State’s BEG MOE calculation.

The MOE is the average level of border enforcement expenditures by the State for the last two fiscal years. In this case the calculation would be \$15,000 divided by two, or \$7,500.

For its FY 2006 BEG program, the State would have to agree (through certification) to maintain total expenditures involving State funds of \$7,500. Federal BEG funds could be used to fund the remaining amount of \$92,500.

## QUESTIONS AND ANSWERS

**Q1. If the only entity within a State that applies for a grant is a local government, must a MOE be calculated?**

A1. Yes. In this case, only the BEG eligible expenditures of this local government agency would be included in the MOE calculation.

**Q2. If a State agency receives BEG funding in FY 2006 but does not receive funding in 2007, must the expenditures in FY 2006 be included in the MOE calculation for the subsequent year?**

A2. No. The MOE is calculated using only the two fiscal years (federal or state) ending prior to October 1, 2005.

**Q3. Once calculated, will the State's MOE always remain the same?**

A3. The MOE may change if:

1. a new State agency begins receiving BEG funding;
2. a previous BEG-funded State agency terminates its participation in the BEG program;
3. a BEG-funded agency begins conducting a new BEG-eligible type of activity; or
4. a BEG-funded agency terminates a BEG-eligible type of activity previously conducted under the BEG program.

**Q4. What expenditures must be included in the MOE calculation?**

A4. All BEG participating State agency expenditures (exclusive of Federal funds) for any BEG-eligible type of activity for which funding is being requested must be included in the calculation. However, any expenditure included in the State's MOE calculation for the MCSAP must be excluded.

**Q5. What are BEG-eligible types of activities?**

A5. Any activities conducted to achieve the FMCSA's BEG national priorities are BEG-eligible types of activities. This includes activities designed to increase the number of commercial vehicle inspections (including HM inspections), financial responsibility checks, driver license checks or operating authority checks in Border States focusing on international traffic; ensuring southern Border States are meeting all requirements to allow access to Mexico domiciled carriers beyond the border commercial zones; improving the capability to conduct CMV safety inspection at remote sites near the border; and, developing appropriate telecommunication systems and coordination procedures with federal inspection agencies and others.

**Q6. What about expenditures for activities conducted away from the border?**

A6. If these activities are for the primary purpose of ensuring foreign and international motor carrier and driver compliance with all FMCSA (or State compatible) rules and regulations, or Congressional requirements for Mexican motor carriers to operate in the United States, the expenditures must be included in the MOE consistent with the principles identified above. The location of the activity is irrelevant.

**Q7. What type of documentation must a State provide FMCSA concerning its calculation of the MOE?**

A7. Although the State is responsible for calculating an MOE, documentation is not required to be provided to FMCSA as a condition of participation in the BEG program. States are required to certify annually (Attachment), when receiving BEG funding, that they have calculated an MOE and agree to maintain the MOE level of expenditure. The State is responsible for maintaining and providing documentation of the MOE calculation in the case of a Federal or Federally-requested audit.

**Q8. What happens if a Federal audit determines the MOE is higher than the original calculation?**

A8. A final decision will be made by the Division Administrator based upon circumstances and findings. Federal BEG funds or other federal funds may be withheld to cover the difference.

**Q9. What happens if a Federal audit determines the MOE is lower than the original calculation?**

A9. The Division Administrator will determine if the State is entitled to an additional reimbursement. The decision will consider the availability of BEG funds for the particular fiscal years in question, any legal requirements, and any other issues deemed appropriate by the Division Administrator. In no case will a reimbursement be made for a fiscal year using funding appropriated for a different fiscal year. For example, a State cannot be reimbursed for an FY 2006 activity using FY 2007 BEG appropriated funds. If FY 2006 appropriated funds are available for allocation or reallocation in FY 2007, then the State may be reimbursed using the available FY 2006 funds provided the reimbursable activities were included in the State's approved BEG plan.

**Q10. If a commercial motor vehicle inspector's salary and fringe benefits are included in the BEG MOE calculation, and the inspector is reassigned to a position that does not involve BEG activities, can the State recalculate the MOE to exclude the inspector's salary and fringe benefits?**

A10. No. The MOE calculation is based on expenditures incurred for BEG eligible activities during the two fiscal years ending before October 1, 2005. All appropriate State expenditures for those two fiscal years must be in the MOE calculation.

**Q11. Are all MCSAP-eligible activities eligible for BEG funding?**

A11. Although the BEG program uses MCSAP as a guide to determining the eligibility of BEG activities, certain MCSAP-eligible activities may not be BEG-eligible activities. For example, conducting compliance reviews or new entrant audits on Canadian motor carriers is not a BEG-eligible activity. BEG-eligible activities must be consistent with the FMCSA established BEG program priorities (Attachment).

**Q12. If the State only used 100 percent federally-funded BEG funds in FY 2004 and FY 2005 for its border enforcement program, how will the State calculate its MOE?**

A12. In that case the MOE for the State would be \$0. All the funding the State received in FY 2004 and FY 2005 for border enforcement activities was 100 percent federally-funded. Federal funds are excluded from the BEG MOE calculation.

**Q13. Must an entity (an individual or organization other than a State) calculate and agree to an MOE?**

A13. No. SAFETEA-LU provides that only a State or its political subdivisions must comply with the maintenance of expenditure requirement.