



U.S. Department  
of Transportation

# Memorandum

**Federal Motor Carrier  
Safety Administration**

**SP-06-003-GE**

**Subject:** Maintenance of Effort Requirements under  
SAFETEA-LU

**Date:** APR 27 2006

**From:** *Will Hartman*  
Daniel Hartman  
Associate Administrator for  
Enforcement and Program Delivery

**Reply to** MC-ES  
**Attn of:**

**To:** Field Administrators  
Division Administrators  
State Program Managers

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) imposed new requirements for the calculation of the States' maintenance of effort (MOE), as required for participation in the Motor Carrier Safety Assistance Program (MCSAP). Since 1982, the method of calculating MOE and the application of that figure to a State's Commercial Vehicle Safety Plan remained relatively static.

Under SAFETEA-LU, instead of using a static two- or three-year period (as had been done in the past), SAFETEA-LU requires a "sliding" three-year "base period". Specifically, SAFETEA-LU requires the MOE to be calculated over a three-year period starting five years earlier. For example, the MOE three-year base period for FY 2007 starts with FY 2002 and goes through FY 2004. This sliding scale allows the MOE calculation to move forward over the years, providing the State with a more current MOE calculation.

The purpose of the attached MOE guidelines document, the budget template and spreadsheet is to assist the States in calculating their MOE.

If you have any questions or require additional information, please contact Michael J. Lamm at (202) 366-6830 or via e-mail at [mike.lamm@dot.gov](mailto:mike.lamm@dot.gov).

enclosure

## **GUIDELINES FOR STATES ESTABLISHING MAINTENANCE OF EFFORT (MOE)**

### **PURPOSE**

The purpose of developing Maintenance of Effort (MOE) operational guidelines is to assist States in calculating their MOE. These guidelines will assist the States with calculating their MOE relative to the changes provided in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

### **BACKGROUND**

The Surface Transportation Assistance Act of 1982 (STAA) established the Motor Carrier Safety Assistance Program. As part of the requirements for a State to participate in the MCSAP, the STAA required the State to provide the aggregate expenditure of funds for commercial motor vehicle (CMV) safety programs, exclusive of Federal funds and State matching funds, to be maintained at a level which did not fall below the average level of expenditures in 1981 and 1982, the last two full fiscal years preceding the date of enactment. In other words, the State must expend at least the calculated amount on eligible motor carrier safety activities to be eligible for further MCSAP funding. A State's Commercial Vehicle Safety Plan (CVSP) must reflect the amount of the MOE and the activities and expenditures that support it, as well as all other MCSAP funded activities and expenditures.

The MOE requirement was changed by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA changed the MOE period from the two-year period required by STAA to a three-year period covering 1989, 1990, and 1991. This three-year period would be used to establish the State's average aggregate expenditure, excluding any State contributions used to meet the 20 percent match requirement, as well as any State expenditures for Federally-sponsored demonstration projects or pilot programs.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) further changed the MOE requirements. MCSIA provided that the total expenditures of the State and its political subdivisions for the development or implementation of programs for improving motor carrier safety and enforcement of regulations, standards, and orders of the United States on CMV safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders will be maintained at a level at least equal to the average level of expenditures for 1997, 1998, and 1999.

The latest changes to the calculation of MOE come from SAFETEA-LU. Instead of using a static two- or three-year period, SAFETEA-LU adds a "sliding" three-year "base period". Specifically, SAFETEA-LU requires the MOE to be calculated over a three-year period starting five years earlier. For example, the three-year MOE base period for FY 2007 starts with FY 2002 and goes through FY 2004. This sliding scale allows the MOE calculation to move forward over the years, providing the State with a more current MOE calculation.

## DETERMINATION OF MAINTENANCE OF EFFORT

When calculating MOE any identifiable and eligible expenditures incurred by the State or its political subdivisions participating, or expected to participate, in the MCSAP Basic grant will be included (excluding Federal funds and the State contributions used to meet the 20 percent match). These expenditures are subject to verification by Federal, State, or third-party auditors. When determining expenditures to include in the MOE calculation, the State must include all activities that are eligible in the current fiscal year for allocation or to meet the basic conditions of the MCSAP.

SAFETEA-LU changed the eligibility of some previously ineligible activities starting in FY 2006. MCSAP-eligible activities continue to include the following when conducted in conjunction with a North American Standard Inspection:

1. Enforcement of commercial size and weight limitations at locations other than fixed weigh facilities, at specific locations (such as steep grades or mountainous terrains) where the weight of a CMV can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States;
2. Detecting the unlawful presence of a controlled substance in a CMV or on the person of any occupant of such vehicle; and
3. Enforcement of State traffic laws and regulations designed to promote safe operation of CMV s.

The SAFETEA-LU expanded eligible traffic enforcement activities to include **documented** traffic enforcement on CMVs, and non-CMV s without an accompanying safety inspection, when necessary to promote the safe operation of CMV s. As a result, the State must include all costs associated with the above activities conducted during the base period (in the case of FY 2006, the base period is FY 2001 through 2003) by the State and all political subdivisions currently receiving, or planning to receive, MCSAP funding. The calculation must include all activities which meet the current requirements for MCSAP funding eligibility.

**Documented Traffic Enforcement**, as used in these guidelines and for the purposes of MCSAP funding eligibility, is defined as evidence that a written traffic citation or written warning was issued to the driver of a CMV, or the driver of a non-CMV for a moving violation. In the case of a driver of a CMV, the evidence must show that the citation or warning was issued for a moving violation while operating a CMV. In the case of a driver of a non-CMV, the evidence must show that the citation was necessary to promote the safe operation of a CMV and was for a moving violation.

**Third-Party In-Kind Contributions**, as used in these guidelines, are defined by 49 CFR 18.3 as property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. The provisions of 49 CFR 18.24 apply when determining the matching share value of third-party in-kind contributions.

**Maintenance of Effort (MOE)**, as used in these guidelines, is defined as the average aggregate expenditure of State and participating local agencies' funds for motor carrier and hazardous materials safety enforcement purposes by the State and participating local agencies in the year for which the grant is sought. Calculation of the State's level of effort (MOE) does not include -1) *Federal funds received for support of motor carrier and hazardous materials safety enforcement*, 2) *State matching funds*, or 3) *State funds used for demonstration or pilot CMV safety programs*. **Note:** Federal and State matching funds excluded from the MOE calculation include federally-sponsored high priority activities, the New Entrant Safety Assurance Program, and third-party in-kind contributions.

**MOE Base Period**, as used in these guidelines, is defined as the sliding 3 full fiscal year period beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year. Example: for Federal FY 2006, the MOE calculation period is FY (State or federal) 2001, 2002, and 2003.

**Participating Agency**, as used in these guidelines, is defined as any local agency that receives or is intending to receive MCSAP funds. For MOE computation purposes, ALL State-level agencies performing eligible activities are "participating agencies", whether they receive MCSAP funds or not. County or municipal agencies are "participating" only if they receive or intend to receive MCSAP funding.

## QUESTIONS

The following questions have been developed to assist in determining costs to be included in the MOE calculation.

1. Are costs associated with size and weight (S&W) enforcement activities to be included in the MOE?

States are required to incorporate size and weight enforcement in the MOE when performed in conjunction with a roadside safety inspection at other than a fixed site location (see #3 below for the definition of fixed site).

2. A State performs roadside safety inspections in conjunction with size and weight activities using portable scales. The State operates the portable scales on the first Monday and Friday of every month between 8:00am and 5:00pm at the same location. On Tuesday and Thursday of each week, the State also operates portable scales at one designated location between 6:00am and 3:00pm (different from the Monday and Friday location). Are the above size and weight activities considered eligible costs and therefore included in the MOE?

Portable scales operating at a predetermined location, on scheduled days and a scheduled time of day, are considered a fixed location. The schedule shown above could be expected by a driver since an established location, time and day each week and each month is established and adhered to. Therefore, this is an ineligible cost and not to be included in the MOE. **EXCEPTION:** Scheduled size and weight activities at seaports and at locations, such as steep grades or mountainous terrain, where weight may cause more acute safety problems, are considered an eligible expense when performed in conjunction with an inspection and should be included in the MOE.

3. Are costs associated with size and weight (S&W) enforcement activities to be included in the MOE?

States are required to incorporate size and weight enforcement in the MOE when performed in conjunction with a roadside safety inspection at other than a fixed site location (refer to the definition of fixed site).

4. The MCSAP lead agency funds one person who performs a MCSAP inspection on a vehicle at a non-fixed location. In conjunction with the inspection, a non-MCSAP agency person performs the size and weight activity on the same vehicle. Is the size and weight activity to be included in the MOE?

No. Size and weight enforcement alone is not an eligible activity. Reimbursement applies to one inspector who performs S& W (or drug interdiction) activities accompanied by an eligible inspection.

5. Are CMV accident investigations performed by a participating MCSAP agency included in the MOE?

Accident investigations conducted by a MCSAP participating agency are not considered eligible activities and are not to be included in the calculation of the MOE. Post-crash inspections of CMVs are an eligible activity.

6. A traffic enforcement officer from a participating agency spends an 8-hour shift working radar and stops four cars and four CMV s. The officer conducted two non-funded North American Standard Level II inspections on the CMVs in conjunction with the traffic stops. What costs should the State calculate in the MOE?

Only MCSAP-eligible activities are subject to inclusion in the MOE calculation. In this case, the State should include the expenditures incurred by the traffic enforcement officer who performs a North American Standard Inspection in conjunction with the traffic stop, as well as any other documented traffic enforcement (without inspection) on the driver of a CMV, or the driver of a non-CMV when it was necessary to promote the safe operation of a CMV. Therefore, in the above scenario, the time spent by the traffic enforcement officer conducting the

North American Standard Level II inspections and the portion involving the actual traffic stops (e.g. issuing citations) should be included in determining the MOE. With regard to the other six traffic stops, only those traffic stops where the State can document that a citation or warning was issued to either a driver operating a CMV, or to a driver of a non-CMV when it was necessary to promote the safe operation of a CMV, will have to be included in the MOE.

7. A traffic officer from a non-MCSAP agency directs CMVs to a location where an inspection will be conducted. An inspector from a participating MCSAP agency performs the inspection. Should the State include the expenses incurred by the traffic officer in the State's MOE?

Directing traffic, whether performed by a MCSAP officer or any other law enforcement officer, is not an eligible expense. Therefore, these expenses would not be included in the MOE.

8. A State has provided North American Standard Inspection (NASI) training to enforcement personnel of a non-participating local agency. Some of these enforcement personnel are conducting and uploading eligible inspections. Should the State include the expenses of enforcement personnel of a non-participating local agency who are conducting NASI inspections in the calculation of the MOE?

No. The State is required to include only eligible expenses of all participating local agencies, as well as those agencies planning to participate, in the calculation of the MOE.

**NOTE:** the MCSAP-eligible activities of all **STATE** agencies, reimbursed or not, shall be included in the calculation of the MOE.

9. A MCSAP Lead Agency decides to expand its program by adding a local agency to perform traffic law enforcement after the MOE had been established. Must the MCSAP Lead Agency recalculate its MOE?

The MCSAP Lead Agency must recalculate its MOE when:

- (1) it adds another MCSAP participating agency who has performed eligible MCSAP activities during the base period; or
- (2) if an agency that participated in MCSAP during the base period drops out of the program; or
- (3) a previously ineligible activity becomes eligible and it was conducted during the base period.

10. If a State cannot determine its MOE, can the State estimate its MOE or claim zero for its MOE?

If a State has been participating in MCSAP and it is known that identifiable costs associated with MCSAP-eligible activities have been incurred, then the MOE must be calculated. In the absence of records, a reasonable estimate; based upon available information, will suffice and is subject to review and approval by the FMCSA. A zero MOE is unacceptable when it is known that costs have been associated with MCSAP eligible activities.

11. Are State-mandated bus inspections which are conducted pursuant to the NASI to be included in the calculation of the MOE?

No. Only MCSAP-eligible expenses are to be included in the MOE. Bus inspections which are conducted for the purpose of compliance with periodic inspection requirements are ineligible.

12. Are NASI inspections conducted by a participating agency in response to an HM incident counted in the MOE?

Yes. MCSAP inspections performed by a participating agency associated with first or immediate response to HM incidents are eligible for MCSAP reimbursement and should be included in the calculation of the State's MOE. Emergency response: actions beyond the first response costs, such as HM spill cleanup or detailed HM incident investigations other than first response are not eligible expenses for MCSAP and should not be counted toward the MOE.

13. After the amount of the MOE is determined, what type of MOE documentation should the MCSAP Lead Agency submit to FMCSA?

Previously MOE documentation was required to be retained but was not included in the CVSP, States will now be required to calculate and certify MOE annually and must include MOE documentation in the CVSP. This self-certification is included in 49 CFR 350.211(8) and 350.213(n). It is also available on the FMCSA website. Enclosed in this package are examples of spreadsheets a State can use to calculate MOE.

14. An audit is conducted on the estimated MOE submitted by a State. The audit reveals justification that the MOE is higher than originally estimated. Must the State reimburse the U. S. Department of Transportation with the balance of funds discovered in the higher MOE for each year?

A final decision shall be made by the Associate Administrator for Enforcement and Program Delivery based upon circumstances and findings.