



ISSUE #5 MAINTENANCE OF EFFORT FORMULA REVISION

PROBLEM

The current Maintenance of Effort (MOE) is problematic because it is based upon the financial resources of a state versus the performance of that state relative to the execution of duties under the Motor Carrier Safety Assistance Program (MCSAP). Since the MCSAP is a performance-based program that seeks to reduce crashes and fatalities through specific enforcement and education efforts, the current MOE system is no longer viable.

The formula for computing MOE under the MCSAP is complicated and has even necessitated FMCSA to distribute a memo and guidance materials to explain how the formulas enacted in SAFETEA-LU work. More importantly, the net effect of the MOE is a disincentive to new programs and initiatives in the states and in some cases has caused a reduction in force.

While the basic concept of MOE is simple and fair, its implementation has flaws:

1. It preserves the “relative” CMV safety efforts among the states and the “ratcheting up” effect serves as a disincentive for states to invest more in CMV safety. It does not incent innovative and efficient strategies;
2. It preserves uneven and non-uniform programs from state to state rather than promoting uniformity and equality from state to state; and
3. As MOE currently is structured it is not based on risk and performance nor is it outcome-based. It is input and funding based.

BACKGROUND

MOE is the state’s total eligible motor carrier safety effort, excluding federal funds received for support of motor carrier and hazardous materials safety enforcement, State matching funds, and state funds used for federally-sponsored demonstration or pilot CMV safety programs. The MOE excludes the matching funds that are not a part of in-kind services.

The Surface Transportation Assistance Act of 1982 (STAA) authorized the MCSAP grant program. The Act required a state to provide the aggregate expenditure of funds for CMV safety programs, exclusive of federal funds, to be maintained at a level which did not fall below the average level of expenditure for its last two full fiscal years (1981, 1982) preceding the date of enactment (1/6/83).

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Title IV - Motor Carrier Safety Act of 1991 amended the STAA of 1982. The Act required a state to provide aggregate expenditure of funds for commercial vehicle safety programs,



CVSA DOT Reauthorization Policy Issues



enforcement of commercial size and weight limitations, drug interdiction, and enforcement of state traffic safety laws and regulations. The aggregate expenditure of funds were required to be maintained at a level which did not fall below the average level of such expenditure for its last three full fiscal years (1989, 1990, 1991) preceding the date of enactment (12/18/91). When estimating the average level of expenditures, the state was permitted to exclude state expenditures for federally sponsored demonstration or pilot programs. States were required to exclude federal funds and state matching funds used to receive Federal funding.

The Motor Carrier Safety Improvement Act of 1999 amended Title 49, U.S. Code, and established the Federal Motor Carrier Safety Administration (FMCSA) within the Department of Transportation. The Act required a state to enter into a binding agreement with the Secretary that provides that the total expenditures of amounts of the state and its political subdivisions (not including amounts of the U.S.) for the development or implementation of programs for improving motor carrier safety and enforcement of regulations, standards, and orders of the U.S. on commercial vehicle 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 such expenditures for fiscal years 1997, 1998, and 1999.

With the passage of SAFETEA-LU in 2005, the MOE base period was changed to a sliding three-year period beginning with 2001-2003, and its scope was amended to include enforcement on CMVs without an inspection as well as traffic enforcement on passenger vehicles when they affected safe CMV operations.

The end result was the following MOE formula for the Basic MCSAP: the three-year average of state expenditures beginning after October 1 of the year which is five years prior to the beginning of each government fiscal year. Thus, for 2007, a state must go back to the end of FY 2002 and skip forward to the next FY (for most, it is July) which is 2003 and calculate the average MOE. Thus, for 2007, the MOE would be based on the years 2003, 2004, and 2005. The newly created Border Enforcement and CDL Grant Programs established their own MOE calculations, which are different than the Basic MCSAP.

There are two primary problems this system created. First, states have no incentive to do anymore than what is necessary to meet their federal obligation since any expenditures above and beyond their MOE only serves to further increase that obligation in future years. Therefore, a state is better off investing only what it must to meet its MOE requirements and nothing more. However, this issue is complicated by the fact that in many states the amount of federal funding has not kept pace with the needs of states. When this occurs states have two choices. They can make up the difference and continue to run the program at the same level causing their MOE to increase, or they can reduce the scope of the program. A state that chooses to cut its program will not see its MOE rise but will not be able to sustain its current enforcement program.

The other problem lies in the difference between fiscal years at the state and federal levels. Typically state fiscal years start July 1, whereas federal fiscal years start October



CVSA DOT Reauthorization Policy Issues



1. In many cases distribution of federal funds to the states are done incrementally and have a time lag on them since Congress rarely enacts the annual DOT Appropriations Bill on time. This uncertainty creates huge challenges for states in terms of planning and managing its MOE and resource allocations.

When the MOE was originally established it was to ensure that states who took federal funds continued to maintain their previous motor carrier safety programs at levels comparable to what they were prior to receipt of the new funds. During the initial phases of this program, this type of approach made a lot of sense. However, it has been more than 20 years since the original MCSAP program was implemented and much has changed, including the formula for calculating the MOE.

Today, every state in the nation participates in the MCSAP program and the need to ensure that prior commitment levels are maintained has changed dramatically. Instead of serving as a tool to maintain certain levels of effort by states the MOE has become a disincentive to states to spend more of their own money. This type of system rewards programs that only do the bare minimum and penalizes those who seek to do more with their own resources.

SOLUTION(S)

If not dispensed with altogether, MOE should be reconfigured along functional and performance-based lines. It also should be returned to a fixed MOE period rather than a rolling one. It will take a legislative change to revise the formula.

One solution to this problem would be to focus on the performance of states that receive federal MCSAP funds. This type of approach is in line with the performance-based nature of the MCSAP and could be measured relatively easily. States perform four basic tasks that comprise the bulk of the work conducted in the MCSAP program. They are Driver/Vehicle Inspections, Traffic Enforcement, New Entrant Audits, and Compliance Reviews. Some states have programs that include all of these elements while others do not. Regardless, it is possible to design a system that sets minimum performance levels that is flexible and fair for all. The hallmark of this system would be a customizable framework for each state based upon the types and amounts of activities performed and the total number of staff people that execute these duties.

Establishment of this new system would require each state to determine two important pieces of information. First, states would need to calculate the amount of staffing that is used to execute each facet of the MCSAP program. Next, the state would need to track the volume of work produced by each participant in the program. Finally, a calculation of the average amount of work per full time equivalent (FTE) would be rendered and compared against a standard requirement. States would set their initial FTE limits in their Commercial Vehicle Safety Plan (CVSP) and through quarterly reports true up those figures based upon the actual needs of their states. Therefore, a state that initially certified themselves as having 10 FTEs for Compliance Reviews were to learn later in the year that economic conditions had changed and five of those FTEs were no longer



CVSA DOT Reauthorization Policy Issues



available, could true this figure up to reflect the realities of current economic conditions. At the end of the year, the state would certify its final FTE counts and those figures would be compared against programmatic requirements. FMCSA would then utilize these calculations to determine future MCSAP eligibility. Such requirements should also specify that FMCSA would be required to work with states having trouble meeting the minimum requirements and only revoke funding as a last resort.

By adopting a system that is based upon actual performance and staffing levels, each state would be treated equitably and know exactly what is expected of them. States would also have an incentive to employ every resource available to them since the determination of success or failure would hinge upon their results and not how much they did or did not spend.

To better understand this proposal an example may be useful. Under a performance-based MOE a state would first determine the number of FTE staff used in each of the four areas. To do this the state would need to determine the equivalent number of people they have working in each specific area. For instance, if a state had four people in a program and two spend 100% of their time doing driver/vehicle inspections with one doing 50% of their time on driver vehicle inspections and 50% of their time on compliance reviews, and the fourth spending 100% of their time doing Compliance reviews; the composition of their program would be 2.5 FTE Driver/Vehicle Inspection and 1.5 FTE Compliance Review.

Next, the state would multiply the number of FTEs in an area times the performance figure for that area. The result would be the total amount of work or MOE that must be completed in that area. Using the example above, if the performance figure for Driver/Vehicle Inspection was 25 inspections per FTE then the MOE would be 62.5. Likewise if the CR performance figure was 10 per FTE then the MOE for that area would be 15. Since the state had no traffic enforcement or new entrant staff, their MOE in those areas would be 0.

There are several important things that need to be part of this calculation.

First, the performance figure used to calculate the MOE needs to be the minimum expectation for the state. This represents the state's minimum effort that must be done for the state to qualify for federal MCSAP funding. In addition, the number needs to be averaged over a minimum of a three year time frame, and the base year ideally would be "locked down" for the length of the authorization cycle.

Second, the calculation of the MOE needs to be flexible and has to permit states an opportunity to true up or down its goals at the end of the year. For instance, if a state implements a hiring freeze and several employees retire during that freeze, a state should be given the opportunity to change the number of FTEs that were actually used during the year so that an accurate calculation is performed.

Third, states must be given the assistance necessary to correct programmatic problems and time to improve performance before withholding future funds.



CVSA DOT Reauthorization Policy Issues



Finally, when setting the MOE a good starting point for determining the performance figure for each of the work areas would be to look at the average number of each activity performed nationwide over the last five years on a per person basis. This should help to eliminate any discrepancies either on the high or low end and mollify any regional differences that may exist. However, an exception would need to be made to this approach for New Entrant Safety Audits. Because the number of required Safety Audits is outside of the control of the state due to the fact that only those who apply for registration are required to go through the audit, basing MOE on an FTE number, while possible, is not preferable. We recommend basing the MOE relative to New Entrant Safety Audits on a percentage completion rate (within the mandated 18 months) of those carriers required to undergo the audits.