



Transportation. The strategic plans for the Department of Transportation and for the Federal Highway Administration both include performance measures specifically focused on reducing air pollution from transportation facilities. The CMAQ program provides funding for a broad array of tools to accomplish these goals. By choosing to fund a CMAQ project, a State or local government can improve air quality and make progress towards achieving attainment status and ensuring compliance with the transportation conformity provisions of the Clean Air Act.<sup>3</sup>

Reducing congestion is also a key objective of the Department of Transportation, and one that has gained increasing attention in the past several years. The cost of congestion, which negatively affects the U.S. economy, quality of life, and air quality, has risen dramatically in the last 25 years despite record levels of transportation investment. Some economists estimate that the overall cost of congestion to the U.S. economy approaches \$200 billion a year. As a result, in May 2006, the Department of Transportation announced its *National Strategy to Reduce Congestion on America’s Transportation Network* (the Congestion Initiative) that aims to meaningfully reduce the economic and social costs of congestion on our nation’s highways and in other transportation facilities.<sup>4</sup> This strategy can be found at: <http://isddc.dot.gov/OLPFiles/OST/012988.pdf>.

Since congestion relief projects also reduce idling, the negative emissions impacts of “stop and go” driving, and the number of vehicles on the road, they have a corollary benefit of improving air quality. Based on their emissions reductions, these types of projects, including investments in improved system pricing and operations, are eligible for CMAQ funding.<sup>5</sup> The Department believes State and local governments can simultaneously reduce the costly impacts of congestion while also improving air quality.

### III. AUTHORIZATION LEVELS UNDER THE SAFETEA-LU

#### A. Authorization Levels

Table 1 shows the SAFETEA-LU CMAQ authorization levels by fiscal year. The CMAQ funds will be apportioned to States each year based upon the apportionment factors discussed in Section V.

**TABLE 1**

**SAFETEA-LU CMAQ AUTHORIZATION LEVELS**

<b>Fiscal Year Authorization</b>	<b>Amount Authorized</b>
FY 2005	\$1,667,255,304
FY 2006	\$1,694,101,866
FY 2007	\$1,721,380,718
FY 2008	\$1,749,098,821

<sup>3</sup> 42 U.S.C. §7506 Section 176(c)

<sup>4</sup> Speaking before the National Retail Federation’s annual conference on May 16, 2006, in Washington, D.C., former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America’s roads, rails, and airports. The *National Strategy to Reduce Congestion on America’s Transportation Network* includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: <http://www.dot.gov/affairs/minetasp051606.htm>

<sup>5</sup> 23 U.S.C. §149(b)(5)



Federal Highway Administration

FY 2009	\$1,777,263,247
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## **B. Equity Bonus**

Similar to the minimum guarantee under the TEA-21, the Equity Bonus in SAFETEA-LU provides additional funding beyond the authorized levels so that each State receives a minimum percentage of its gas tax receipts back in the form of Federal-aid funds.<sup>6</sup>

## **C. Transferability of CMAQ Funds**

Since transportation and environmental program priorities fluctuate, States may choose to transfer a limited portion of their CMAQ apportionment to the following Federal-aid highway programs: Surface Transportation Program (STP), National Highway System (NHS), Highway Bridge Program (HBP), Interstate Maintenance (IM), Recreational Trails Program (RTP), and the Highway Safety Improvement Program (HSIP).

States may transfer CMAQ funds according to the following provision: An amount not to exceed 50 percent of the quantity of the State's annual apportionment less the amount the State would have received if the CMAQ program had been authorized at \$1,350,000,000.<sup>7</sup> For example, if the annual national apportionment is \$1.75 billion and a State receives \$10 million more than it would have received if the national apportionment had been \$1.35 billion, the State can transfer up to \$5 million to other programs. Any transfer of such funds must still be obligated in nonattainment and maintenance areas.<sup>8</sup> The amount of transferable funds will differ each year and by State, depending on overall authorization levels. Each year, the FHWA will inform States how much, if any, CMAQ funding is transferable and will track this movement of CMAQ funds. States also may transfer CMAQ funds to other Federal agencies. The SAFETEA-LU provides additional flexibility to complete such transfers when the receiving Federal agency has entered into an agreement with the State to undertake an eligible Federal-aid project.<sup>9</sup> These opportunities apply to projects that have met all CMAQ eligibility requirements prior to the transfer.

## **D. CMAQ and Innovative Finance: State Infrastructure Bank (SIB) and Section 129 Loans**

Projects with dedicated repayment streams, i.e., a consistent source of revenue, may be financed with loans through DOT's innovative finance program as an alternative or supplement to CMAQ funding.

State Infrastructure Banks are State-directed programs that allow Federal-aid funds to be lent to sponsors of eligible Federal-aid projects (any project under Title 23 or capital projects, as defined by 49 U.S.C. §5302, are eligible). SIBs may be capitalized with several Federal-aid highway apportionments including the National Highway System Program, the Surface Transportation Program, the Highway Bridge Program, the Interstate Maintenance Program, and the Equity Bonus program. (Note: CMAQ may not be used to *capitalize* a SIB, but SIB funds may be used to *finance* CMAQ projects). State funds also may be used to capitalize the SIB. The State then receives repayments over time that can be directed toward other transportation

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<sup>6</sup> 23 U.S.C. §105 (SAFETEA-LU §1104)

<sup>7</sup> 23 U.S.C. §126(c)

<sup>8</sup> 23 U.S.C. §149(b)

<sup>9</sup> 23 U.S.C. §132(a) (SAFETEA-LU §1119)



projects. For example, New York State was successful in utilizing its SIB to implement two truck stop electrification projects along the New York State Thruway.

Section 129 loans (23 U.S.C.129(a)(7)) allow states to use Federal-aid highway apportionments to make loans for projects with dedicated revenue streams (this is only applicable to highway, bridge, tunnel, ferry boat, and ferry terminal projects). A Section 129 loan may be used to construct a truck stop electrification facility if the facility is located on the Interstate right-of-way.<sup>10</sup> **[NOTE: The provision for construction in the Interstate ROW has since been removed via Public Law No. 110-244, 122 Stat. 1572 the SAFETEA-LU Technical Corrections Bill]**

The SAFETEA-LU establishes a new SIB program under which all States are authorized to enter into cooperative agreements with the U.S. DOT to establish infrastructure revolving-funds eligible to be capitalized with Federal transportation funds.<sup>11</sup> The key difference between a Section 129 loan and a SIB is that a Section 129 loan usually provides financing to an individual project and funding a SIB capitalizes a financial entity that can assist multiple projects. The two loan programs have similar maximum allowable terms established by Federal law:

- Both public and private entities are eligible to be project sponsors
- Repayments begin within 5 years of project completion
- Maximum loan term is 30 years after project authorization (Section 129) or 30 years after first repayment (SIB)
- Interest rate may be set by State, at or below market rates
- Loans can only be made up to 80 percent of eligible project costs (Section 129). For SIBs, loans can be made up to 80 percent of eligible project costs (although the non-Federal share can be reduced under 23 U.S.C. §120(b) if the sliding scale rate is used).

These innovative loan programs can increase the efficiency of States' transportation investments and significantly leverage Federal resources by attracting non-Federal public and private investment, and provide greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. This type of financing is important for new technologies or start-up businesses that may have difficulty finding financing in the private capital markets. In addition to SIBs and section 129 loans, the FHWA also administers the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides Federal credit assistance to large-scale projects greater than \$50 million.

The following example illustrates how a Section 129 loan could work to construct an idle-reduction facility on an Interstate right-of-way. A private party intends to build a stationary idle-reduction facility, and seeks grant funding for it from the State DOT. The idle reduction facility will eventually earn a profit by charging user fees, but since the capital costs are high, the private party needs assistance with financing the initial construction. Instead of providing an outright grant, the State could offer a loan of Federal-aid funds with flexible repayment terms. If the facility required \$1 million for initial construction, the State could make a loan at five percent over fifteen years. The State could accelerate the payments if the facility were more successful than expected, and delay repayment if the facility failed to meet revenue targets. The State could also build in credits for additional emissions reductions, providing incentives for additional loans

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<sup>10</sup> 23 U.S.C. §111(d) (SAFETEA-LU §1412)

<sup>11</sup> 23 U.S.C. §190 (SAFETEA-LU §1602)



or grants to idle reduction projects. More information on the DOT's innovative finance program is available at <http://www.fhwa.dot.gov/innovativefinance/>.

#### IV. PRIORITY FOR USE OF CMAQ FUNDS

The SAFETEA-LU directs States and MPOs to give priority to two categories of funding. First, priority is for diesel retrofits, particularly where necessary to facilitate contract compliance, and other cost-effective emission reduction activities, taking into consideration air quality and health effects. Second, priority is to be given to cost-effective congestion mitigation activities that provide air quality benefits.<sup>12</sup> Other projects also may be cost-effective. The priority provisions in the statute apply to the portion of CMAQ funds derived from the application of sections 104(b)(2)(B) and 104(b)(2)(C) of SAFETEA-LU, i.e., the CMAQ apportionment formula. They do not apply to areas where CMAQ funding has been derived from the minimum apportionment provisions.

In accordance with the SAFETEA-LU,<sup>13</sup> the EPA has released a guidance document, *The Cost Effectiveness of Heavy-Duty Diesel Retrofits and Other Mobile Source Emission Reduction Projects and Programs*, which provides cost-effectiveness data on diesel engine retrofit technologies and other CMAQ-eligible activities. It is available online at: <http://www.epa.gov/cleandiesel/publications.htm>

In addition, the Transportation Research Board published *The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience* in 2002, providing a number of effectiveness measures for both emissions and travel activity.

Though SAFETEA-LU establishes these CMAQ investment priorities, it also retains State and local agencies' authority in project selection. The law maintains the existing roles and authorities of public agencies, and substantial shifts in local procedures are not required by the SAFETEA-LU.<sup>14</sup> However, project selection should reflect the positive cost-effectiveness relationships highlighted in the EPA guidance. State and local transportation programs that implement a broad array of these cost-effective measures may record a more rapid rate of progress toward their clean air goals, since many of these endeavors generate immediate benefits. Local procedures that elevate the importance of these efforts in project selection—and rate them accordingly—may accelerate the drive to air quality attainment.<sup>15</sup>

In addition to the SAFETEA-LU priority on cost-effectiveness, Section 176(c) of the Clean Air Act<sup>16</sup> requires that the FHWA and FTA ensure timely implementation of transportation control measures (TCMs) in applicable State Implementation Plans (SIPs). These and other CMAQ-eligible projects identified in approved SIPs should receive funding priority.

The FHWA recommends that States and MPOs develop their transportation/air quality programs using complementary measures that provide alternatives to single-occupant vehicle (SOV) travel

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<sup>12</sup> 23 U.S.C. §149(f)(3) (SAFETEA-LU §1808(d))

<sup>13</sup> 23 U.S.C. §149(f)(2)(c) (SAFETEA-LU §1808(d))

<sup>14</sup> 23 U.S.C. §149(f)(3)(B) (SAFETEA-LU §1808(d))

<sup>15</sup> U.S. House, *Safe, Accountable, Flexible, Efficient Transportation Equity Act, a Legacy for Users, Conference Report* (to accompany H.R. 3) (109 H. Rpt. 203), Section 1938, *Priorities Provision in Diesel Retrofit*

<sup>16</sup> 42 U.S.C. §7506 Section 176(c)(2)(B)