These flexible funds or minimum apportionment funds can be used anywhere in the State for projects eligible for either CMAQ or the STP.\textsuperscript{18}

The FHWA Budget Division identifies annual apportionments of CMAQ funds as either \textit{mandatory} or \textit{flexible}. All funding is considered mandatory for States with weighted populations yielding one-half percent or more of the authorized funds (based on the table above). Annual CMAQ funding apportioned through the application of sections 104(b)(2)(B) and 104(b)(2)(C) must be used for projects in nonattainment/maintenance areas.\textsuperscript{19}

States with weighted populations yielding at least some apportioned value but less than one-half percent of the authorized funds receive both mandatory and flexible funds to reach the minimum apportionment. For example, if a State's weighted population yields two tenths of one percent of the authorized funds, it would receive two tenths of one percent of the national funds as mandatory funds, and three tenths of one percent as flexible funds. Thus, 40 percent of the State's funds would be mandatory and 60 percent would be flexible.

For States with no areas applicable to the apportionment table, their minimum apportionment, one-half percent, is all flexible funding. The FHWA reports the breakdown of mandatory and flexible funds by State in its fiscal year apportionment tables.

\textbf{C. Apportionments and State Allocation}

Notwithstanding the statutory formula for determining the apportionment amount, the State may use its CMAQ funds in any ozone, CO, or PM nonattainment or maintenance area. A State is under no statutory obligation to allocate CMAQ funds in the same way they are apportioned. States are encouraged to consult affected MPOs to determine regional and local CMAQ priorities and work with them to allocate funds accordingly.

\textbf{D. Federal Share and State/Local Match Requirements}

The Federal share for most CMAQ projects, generally, has been 80 percent. However, under the Energy Independence and Security Act of 2007,\textsuperscript{20} the Federal share for eligible CMAQ projects carried out with funds obligated in fiscal year 2008 or 2009, or both, may be, at the discretion of the State, up to 100 percent of the cost of the project or program.

\textbf{VI. GEOGRAPHIC AREAS THAT ARE ELIGIBLE TO USE CMAQ FUNDS}

\textbf{A. Eligible Areas}

CMAQ funds may be invested in all ozone, CO, and PM nonattainment and maintenance areas. Funds also may be spent in the few remaining 1-hour ozone maintenance areas (these counties also have Early Action Compacts in place), since the 1-hour standard remains in effect for these areas.

\textsuperscript{18} 23 U.S.C. §149(c) (SAFETEA-LU §1808(c))
\textsuperscript{19} 23 U.S.C. §149(b)
\textsuperscript{20} Pub. L. 110-140, Sect. 1131 (December 20, 2007).
Funds also may be used for projects in proximity to nonattainment and maintenance areas if the benefits will be realized primarily within the nonattainment or maintenance area. The delineation of an area considered “in proximity” should be discussed with the FHWA and FTA field offices and elevated to headquarters if necessary.

B. Maintenance Areas

CMAQ funds may be invested in maintenance areas that have approved maintenance plans under CAA section 175A. In States with ozone or CO maintenance areas but no nonattainment areas, mandatory CMAQ funds must be used in the maintenance areas.\(^{21}\)

C. Maintenance Plan Requirement, SAFETEA-LU

CMAQ funds may be invested in former 1-hour ozone areas that were not designated under the 8-hour standard but where the 1-hour standard has been revoked. Since these areas are required to file maintenance plans, they are considered eligible for CMAQ funding under provisions of the SAFETEA-LU.\(^{22}\)

D. Flexible Funds in PM Areas

While States may use flexible CMAQ funding anywhere and for any CMAQ- or STP-eligible project (see V.B. on minimum apportionment), the FHWA encourages States and MPOs to evaluate the cost-effectiveness and benefits to public health of targeting flexible CMAQ funding to projects that reduce PM. Examples of such projects include implementing a diesel retrofit or idle reduction program, constructing freight/intermodal transfer facilities, traffic signalization, or ITS projects that reduce congestion; paving dirt roads, and purchasing street sweeping equipment.

VII. PROJECT ELIGIBILITY PROVISIONS

A. Project Eligibility: General Conditions

To be eligible for CMAQ funds, a project must be included in the MPO’s current transportation plan and TIP (or the current STIP in areas without an MPO). In nonattainment and maintenance areas, the project also must meet the conformity provisions contained in section 176(c) of the Clean Air Act and the transportation conformity regulations.\(^ {23}\) In addition, all CMAQ-funded projects need to complete National Environmental Policy Act (NEPA) requirements and meet basic eligibility requirements for funding under titles 23 and 49 of the United States Code.

The following should guide CMAQ eligibility decisions:

1. Capital Investment

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\(^{21}\) 23 U.S.C. §149(b)  
\(^{22}\) 23 U.S.C. §149(b) (SAFETEA-LU §1808(a))  
\(^{23}\) 40 CFR Parts 51 and 93