

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 9-10, 2009

Reference No.: 3.13
Information Item

From: NORMA ORTEGA
Chief Financial Officer (Interim)

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Local Assistance

Subject: **NOTIFICATION OF AB 1012 “USE IT OR LOSE IT” PROVISION FOR FEDERAL FISCAL YEAR 2008 UNOBLIGATED CMAQ AND RSTP FUNDS**

SUMMARY:

Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Surface Transportation Program (RSTP) funds apportioned from the federal government are available for use by local agencies for four years. Assembly Bill (AB) 1012 (Chapter 783 of the Statutes of 1999) states that CMAQ and RSTP funds that are not obligated within the first three years of federal eligibility are subject to reprogramming by the California Transportation Commission (Commission) in the fourth year in order to prevent the funds from being lost to the State. The Department of Transportation (Department) is responsible for monitoring and reporting unobligated balances. Moreover, at the beginning of the third year, the Department provides notification to the local agencies of the unobligated CMAQ and RSTP balances that have one year remaining under the AB 1012 guidelines, prior to being subject to reprogramming.

The annual notice to regional agencies under AB 1012 “Use It or Lose It” provisions for Federal Fiscal Year (FFY) 2008 (October 1, 2007 - September 30, 2008) funds was released on or about November 18, 2009. Based on September 30, 2009 balances, the total FFY 2008 funds subject to reprogramming under the provisions of AB 1012 are zero.

When the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted on August 10, 2005, it contained a provision that authorized the Federal Highway Administration (FHWA) to rescind unobligated balances at the conclusion of the Act. This provision, in conjunction with later provisions included in the Energy Independence and Security Act of 2007 (EISA), resulted in a nationwide \$8.7 billion rescission of unobligated balances on September 30, 2009, across all federal programs. The State of California’s share was approximately \$795.6 million and of this, the local agencies’ share was approximately \$507.4 million.

The methodology, applied by FHWA when rescinding the SAFETEA-LU apportionments, was based in part on the oldest apportionments being rescinded first. As a result, there are no balances subject to reprogramming at this time for FFY 2008 for the CMAQ or RSTP program. However, this could change throughout the year if there are project cost savings that result in the deobligation of funds that are older than three years. And should such cost savings occur, the deobligated funds

would fall under the provisions of AB 1012 and would be subject to reprogramming on November 1, 2010.

BACKGROUND:

The State annually receives CMAQ and RSTP funds from the FHWA. The regions receive a share of these apportionments to fund local projects.

The Intermodal Surface Transportation Efficiency Act was enacted in 1991 and was in effect for six years. During that time, local agencies were able to obligate only 87 percent of their federal funding. The next Transportation Act, known as The Transportation Equity Act for the 21st Century (TEA-21), was signed into law in 1998. During the first two years of TEA-21, local agencies' obligation of federal funds dropped to a low of 41 percent. As a result, by October 1999, local agencies had accumulated a \$1.2 billion backlog in federal apportionments and \$854 million in Obligation Authority (OA).

AB 1012 was enacted October 10, 1999, with a goal of improving the delivery of transportation projects and addressing the backlog of local agencies' federal apportionments and OA. Local agencies have successfully met and exceeded this goal. Beginning in FFY 2000, and continuing through FFY 2008, local agencies have been able to obligate a minimum of 100 percent of the OA made available to them.

As a condition of AB 1012, the Department is required to notify the regions, on an annual basis, of the level of apportionments received that are subject to reprogramming.

In order to expend apportionments, local agencies require OA. FHWA has not yet released the total OA level for FFY 2010. The Department has received OA, under a Continuing Resolution for 31 days, based on the previous year's total OA amount. At this time, it is not known when the full annual amount of OA for FFY 2010 will become available. The availability of OA limits the ability of local agencies to expend apportionments.

Attachments

Apportionment Status Report
 CMAQ and RSTP
 (as of October 1, 2009)

Reference No.: 3.13
 Attachment 1

AB 1012
 Balances entering the 3rd Year
 (from FFY 2008)*

Regional Report Summary

*Previously referred to as Cycle 11

| Region | CMAQ Balances | | RSTP Balances | |
|-----------------------|---|-----|---|-----|
| | Subject to Reprogramming by the CTC on: 11/1/2010 | | Subject to Reprogramming by the CTC on: 11/1/2010 | |
| Butte | - | - | - | - |
| Fresno | - | - | - | - |
| Kern | - | - | - | - |
| Kings | - | - | - | - |
| Los Angeles | - | - | - | - |
| Madera | - | - | - | - |
| Merced | - | - | - | - |
| Monterey | - | - | - | - |
| Orange | - | - | - | - |
| Riverside | - | - | - | - |
| Sacramento (SACOG) | - | - | - | - |
| San Benito | - | - | - | - |
| San Bernardino | - | - | - | - |
| San Diego | - | - | - | - |
| S.F. Bay Area (MTC) | - | - | - | - |
| San Joaquin | - | - | - | - |
| San Luis Obispo | - | - | - | - |
| Santa Barbara | - | - | - | - |
| Santa Cruz | - | - | - | - |
| Stanislaus | - | - | - | - |
| Tahoe | - | - | - | - |
| Tulare | - | - | - | - |
| Ventura | - | - | - | - |
| Rural Counties & SCAG | - | - | - | - |
| | | | | |
| TOTAL | | \$0 | | \$0 |

Footnotes:

* Balances entered the 3rd year on October 1, 2009, and are subject to reprogramming on November 1,

Apportionment Status Report
 CMAQ and RSTP
 (as of October 1, 2009)

Reference No.: 3.13
 Attachment 2

AB 1012 Balances entering the 3rd Year
 (from FFY 2008)*

Rural County Report Summary

*Previously referred to as Cycle 11

| Region | CMAQ Balances | | RSTP Balances | |
|----------------------------------|---|-----|---|-----|
| | Subject to Reprogramming by the CTC on: 11/1/2010 | | Subject to Reprogramming by the CTC on: 11/1/2010 | |
| Rural County Information: | | | | |
| Del Norte | - | | - | |
| Humboldt | - | | - | |
| Lake | - | | - | |
| Mendocino | - | | - | |
| Lassen | - | | - | |
| Modoc | - | | - | |
| Plumas | - | | - | |
| Shasta | - | | - | |
| Siskiyou | - | | - | |
| Tehama | - | | - | |
| Trinity | - | | - | |
| Colusa | - | | - | |
| El Dorado | - | | - | |
| Glenn | - | | - | |
| Nevada | - | | - | |
| Placer | - | | - | |
| Sierra | - | | - | |
| Inyo | - | | - | |
| Mono | - | | - | |
| Alpine | - | | - | |
| Amador | - | | - | |
| Calaveras | - | | - | |
| Mariposa | - | | - | |
| Tuolumne | - | | - | |
| Imperial (SCAG) | - | | - | |
| Rural Combined Totals: | | \$0 | | \$0 |

Footnotes:

* Balances entered the 3rd year on October 1, 2009, and are subject to reprogramming on November 1, 2010.