**U.S. DEPARTMENT OF TRANSPORTATION**
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA. 95814
April 7, 2008

IN REPLY REFER TO
HDA-CA
Document # S51634

Mr. Will Kempton, Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Attention: Federal Resources Office, Room 3500
For Mr. Muhaned Aljabiry, Chief

Dear Mr. Kempton:

SUBJECT: FHWA Revised Guidance Regarding Changes to the CMAQ

This letter transmits Federal Highways Administration (FHWA) revised guidance regarding changes to the Congestion Management and Air Quality Improvement Program (CMAQ) brought about by the Energy Independence and Security Act signed in December 2007 (Energy Act). This guidance replaces some of the FHWA Questions and Answers distributed on February 28, 2008, while the remaining Questions and Answers remain unchanged.

As you may recall, the Energy Act made adjustments to the Federal share for CMAQ projects obligated in fiscal years 2008 and 2009. The FHWA guidance on the minimum Federal CMAQ share has changed substantially. The FHWA has conducted an assessment of the provisions in 23 U.S.C. 120 that govern the States' flexibility in choosing Federal share for CMAQ projects. The FHWA has concluded that the provisions of 23 U.S.C. 120(i), which allows States to increase the non-Federal share, are not in conflict with 23 U.S.C. 120(c)(2), the new provision added by the Energy Act. Because Congress did not include specific language to override existing Section 120(i), States retain the flexibility provided by that section to contribute an amount in excess of the non-Federal share of a project under Title 23 so as to decrease the Federal share payable. Consequently, CMAQ projects in the planning or implementation stages that are programmed for less than the standard 80 percent Federal share can move forward.

If you have questions regarding this revised guidance, please contact Aimee Kratovil, FHWA Air Quality Specialist at (916) 498-5866 or email aimee.kratovil@fhwa.dot.gov.

Sincerely,

For
Gene K. Fong
Division Administrator

Enclosures:
FHWA Revised CMAQ Federal Share Guidance – Questions & Answers (Document #51633)

# Energy Act Provisions: CMAQ Federal Share
*Questions & Answers*

1. *Does the Energy Act require specific Federal shares for CMAQ projects?* No. The Act provides that, in FY 2008 (as of December 20, 2007) and FY 2009, the Federal share payable for CMAQ obligations may be up to 100 percent at the discretion of the State. However, States retain the flexibility to increase the non-Federal share, as provided in 23 U.S.C. § 120(i).

2. *Does the Energy Act provision create a minimum Federal share or "true floor" of 80 percent for CMAQ projects?* No. The Office of Chief Counsel analyzed the provisions in 23 U.S.C. § 120 and determined that 23 U.S.C. § 120(i), which gives States the flexibility to increase the State share in a Federal aid project, applies to the CMAQ provision in 23 U.S.C. § 120(c)(2). Consequently, there is no absolute minimum of 80 percent Federal share. For example, public-private partnerships that had been planned for a 50-50 split can move forward for programming in plans and TIPs.

3. *Does the increased Federal share provision apply to funds apportioned in years prior to FY 2008?* Yes. The provision applies to CMAQ funds obligated in FY 08 and FY 09, regardless of the year of apportionment.

4. *Do States need to apply a uniform share statewide?* No. The provision can be applied differently for each project under obligation.

5. *For States that make use of Advance Construction (AC), does the increased Federal share provision apply to AC?* An AC authorization is not an obligation of Federal funds. When adequate obligation authority is available and the State seeks reimbursement for AC projects, any obligation of CMAQ funds occurring in FY 2008 or FY 2009 can reflect the amended provision for 100 percent CMAQ share.

6. *Will the CMAQ Federal share provision continue after 2009?* The provision is specific to funds obligated in FY 2008 and FY 2009. We are unable to predict whether it will be incorporated into the next reauthorization or any extension acts.