Clean Air Task Force
American Lung Association
Connecticut Council on Occupational Safety and Health
Environmental Law and Policy Center
Environment Georgia
GreenLaw
Group Against Smog and Pollution
New York Public Interest Research Group
Mothers & Others for Clean Air
Public Citizen of Texas
Respiratory Health Association of Metropolitan Chicago
Southern Alliance for Clean Energy
Sustainable Pittsburgh

January 13, 2014

U. S. Department of Transportation
Dockets Management Facility
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Notice of Interim Guidance and Request for Comments
Congestion Mitigation and Air Quality Improvement Program
FHWA Docket No. FHWA-2013-0023
Submit to: http://www.regulations.gov.

To Whom it May Concern:

We are writing in response to the November 12, 2013 Federal Register Notice requesting comments on the FHWA Interim Guidance for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program. We are deeply concerned that the interim Guidance does not implement the clear priority status that Congress gave to using CMAQ funding for diesel retrofit projects and other projects that are focused on reducing PM2.5 emissions in PM nonattainment areas.

Our comments are presented in the order that these sections appear in the Interim Guidance.

IV. COST-EFFECTIVENESS AND PRIORITY USE OF CMAQ FUNDS

Cost-Effectiveness. MAP-21 requires U.S. DOT to publish information on cost-effectiveness of CMAQ projects, and State DOTs and MPOs are required to consider such information in the project selection process. 23 USC §149(i). No new information on cost-effectiveness has been made available since MAP-21 was enacted in July 2012 and although a host of research studies and other cost-effectiveness approaches are available on-line and referenced in the Interim Guidance, FHWA has not yet met this important MAP-21 requirement.

In practice, very few State DOTs and MPOs are considering cost-effectiveness in project selection. U.S. DOT must release this information so that State DOTs and MPOs can meet their statutory obligation to consider cost-effectiveness in project selection.

While we appreciate the FHWA Interim Guidance discussion of the MAP-21 focus on efficiency and cost-effectiveness in project selection, the FHWA should expedite the publishing of current cost-effectiveness information as required under MAP-21.

Priority for PM2.5 Reduction Projects. MAP-21 requires that priority is to be given to projects that reduce PM2.5 emissions in PM2.5 nonattainment or maintenance areas, explicitly including diesel retrofits. 23 USC §149(g)(3). The Interim Guidance does not elaborate on how this priority is to be exercised by state DOTs and MPOs. "Priority" is defined by the Merriam-Webster dictionary as "a preferential rating; especially: one that allocates rights to goods and services usually in limited supply." In the context of MAP-21, this means that CMAQ funding must first be directed to qualifying diesel retrofit projects and other projects that primarily reduce PM2.5 emissions before other otherwise qualifying projects are funded.

FHWA's final Guidance should emphasize that the MAP-21 requirement for priority consideration of diesel retrofit projects and other projects that reduce PM2.5 emissions means that such projects must be funded first.

V. ANNUAL APPORTIONMENT PROCESS FOR CMAQ FUNDS

C. Priority Set-aside for PM2.5 Areas

We fully support the MAP-21 requirement to set-aside a substantial portion of CMAQ funding in PM2.5 nonattainment or maintenance areas for projects that reduce PM2.5. 23 U.S. C. 149(k). Moreover, we believe that the intent of Congress in including this provision in MAP-21 was to dedicate such funds to projects that reduce directly emitted PM2.5, not to projects that may primarily reduce NOx or VOCs, which are precursors to PM2.5, but that primarily contribute to ozone formation. There is no language in the MAP-21 set-aside that refers to precursors of PM2.5. Yet, the current interpretation of MAP-21 by state DOTs, MPOs, and FHWA (as indicated in the Interim Guidance), allows areas to use the PM2.5 set-aside funding for projects that reduce PM2.5 *or its precursors*. **This interpretation effectively renders the set-aside language in MAP-21 meaningless, because it allows CMAQ funding intended for PM2.5 reduction projects to be used for projects that primarily reduce ozone.** In talking to MPOs and state DOTs, the impact of the PM2.5 set-aside has been minimal at best due to a lack of clear guidance on the set-aside requirement.

We strongly urge FHWA to clarify in the final Guidance that the PM2.5 set-aside is meant only for projects that primarily reduce directly emitted PM2.5 emissions and is not intended to support projects that primarily reduce NOx or VOCs or that have only marginal impacts on PM2.5 emissions.

Weighting factor for PM2.5

FHWA indicates in the Interim Guidance that it will be proposing a weighting factor for PM2.5 through a rulemaking and public comment process. We urge FWHA to propose a weighting factor that adequately takes into account the significant health impacts of PM2.5 and the challenges that transportation agencies face in reducing PM2.5 emissions, which primarily come from diesel vehicles and equipment.

For example, for cost-effectiveness calculations used in California and elsewhere, PM2.5 reductions are given 20 times the weight of NOx and VOC emission reductions. This is because of the health impacts of PM2.5 and the need to focus on emissions reductions from diesel vehicles and equipment, the primary sources of PM2.5 from mobile sources.

Major progress has been made since 1990 to address ozone issues, with 46 areas nationwide currently violating the 2008 ozone standards (and 36 of those areas are classified as marginal ozone areas, including the New York City region) as compared to over 100 areas that violated the ozone standard in 1990. With respect to PM2.5 nonattainment areas, there are 28 PM2.5 areas where over 65 million Americans are exposed to PM2.5 levels that exceed the 2006 EPA standard.

Congress has clearly indicated in MAP-21 that it is time to focus on PM2.5 emissions that pose real health issues and for which we have excellent control technologies available for implementation. It is both appropriate and necessary to weight PM2.5 in the apportionment of CMAQ funding based on its excessive health impacts and this should be reflected in FHWA's proposed rule on the weighting factor.

VII. PROJECT ELIGIBLITY PROVISIONS

F. Eligible Projects and Programs

1. Diesel Engine Retrofits & Other Advanced Truck Technologies

We generally support the text of the Interim Guidance on this issue with one major exception. The final paragraph of this section states:

"Many diesel retrofit projects involve private sector participation. Although standard match rates established in 23 U.S.C. 120 apply to these efforts, States and local governments are encouraged to seek a higher non-Federal match from those participants that ultimately will own the equipment. ***An even 50-50 split share between the Federal CMAQ and all other sources has been a frequent compromise for many past projects in this arena.****" [Emphasis added]*

Experience with diesel retrofit projects has been that diesel retrofits are g**enerally funded at 80% federal and 20% local match, like most other CMAQ projects**. In fact, the ARRA act provided a major boost to diesel retrofit programs funded under CMAQ due to the allowance to use 100% of federal funds for projects. Specific areas that benefitted tremendously from this provision include New York City, and its school bus retrofit program. Likewise in the currently operating Hunts Pt. diesel retrofit program in the Bronx the 20% match is supplied through public sources. FHWA should recognize that (particularly for diesel retrofits of the oldest and dirtiest engines) there is no business case for a trucker to retrofit his truck. Retrofits have been very successful where they are required and/or where incentive funding is available to pay for them.

To suggest that a 50%-50% matching ratio is common is not correct and could virtually stop the public-private partnerships that have been funded through the CMAQ program, resulting in the loss of cost-effective projects that reduce PM2.5 emissions. If FHWA insists on retaining this language, we would like to see the data that supports the contention that this matching ratio has been a "frequent compromise". This simply is not the experience with respect to diesel retrofit projects or other private-public partnerships.

FHWA should maintain its long-standing position that CMAQ funds are eligible for 80% of project costs and that state DOTs and MPOs can, at their discretion, negotiate higher matching levels (without discriminating against diesel retrofit projects by singling them out for such treatment).

IX. PROGRAM ADMINISTRATION

C. Annual Reports

CMAQ Annual Reports, Tracking System and Public Data Base

Many good examples of diesel retrofit projects that have been funded over the years could be included in the CMAQ Tracking System and public database. This would greatly assist state DOTs and MPOs that are looking for best practices in CMAQ project selection and implementation. Adding diesel retrofits as a specific project type in the Tracking System and public database is even more important

now that Congress has emphasized PM2.5 reductions, priority for cost-effective projects, and specifically called out diesel retrofits as an effective way to reduce harmful PM2.5 emissions.

We believe that diesel retrofit projects should be explicitly reported as one category of projects that are to be included in the CMAQ Tracking System, public database, and Annual reports to the FHWA by state DOTs and MPOs.

Thank you for the opportunity to comment on the Interim Guidance for the CMAQ program. This program offers great potential to reduce harmful diesel and other PM2.5 emissions, but for this to happen FHWA needs to emphasize the importance of selecting diesel retrofit projects and similar cost-effective projects that are primarily focused on reducing PM2.5 emissions.

Sincerely,

Conrad Schneider, Advocacy Director
Clean Air Task force

Janice E. Nolen, Assistant Vice President, National Policy
American Lung Association

Mike Fitts, Executive Director
Connecticut Council on Occupational Safety and Health

Faith Bugel, Senior Attorney
Environmental Law and Policy Center

Jennette Gayer, Advocate
Environment Georgia

Stephanie Stuckey Benfield, Executive Director
GreenLaw

Rachel Filippini, Executive Director
Group Against Smog and Pollution

Susan Berryman-Rodrigues, Project Director
Mothers & Others for Clean Air

Joseph Stelling, Environmental Campaign Organizer
New York Public Interest Research Group

Tom Smith, Director
Public Citizen of Texas

Brian Urbaszewski, Director of Environmental Health Programs
Respiratory Health Association of Metropolitan Chicago

Anne Blair, Clean Fuels Director
Southern Alliance for Clean Energy

Court Gould, Executive Director
Sustainable Pittsburgh