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Before the House Committee on Transportation and Infrastructure
Surface Transportation Subcommittee

September 26, 1996

The CMAQ Program and Program Delivery/Streamlining

Mr. Chairman, Members of the Committee, I thank you for the opportunity to testify on the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and on the Department of Transportation's (DOT) ongoing efforts to more efficiently and effectively exercise our important oversight responsibilities for the Federal-aid highway and motor carrier safety programs.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) presented a vision for the future that protects the extensive Federal investment we have made in our roads, bridges, and transit systems over the decades and it emphasizes enhancing the transportation system's efficiency, monitoring and improving system performance, and ensuring that future investments reflect consideration of economic, environmental, and quality-of-life impacts. Secretary Peña fully supports that vision, which he sees as a literal and critical bridge to the 21st century. ISTEA recognized the key role that transportation plays in the Nation's economy and in turn its importance to the economic health and vitality of each State and its urban and rural areas. Further, in adopting ISTEA, Congress provided for States' different needs and priorities and empowered States and metropolitan planning organizations (MPOs) to set their priorities for investments to be funded with Federal transportation dollars. At the same time, Congress

recognized the need to ensure that national objectives are addressed including the need to improve mobility for people, improve connections between modes of transportation for goods and people, and reduce the environmental impacts of our transportation investments. Flexibility in choosing transportation investments that are appropriate to States and urban areas while attending to these national objectives is the cornerstone of ISTEA.

I. Congestion Mitigation and Air Quality Improvement Program

A. The CMAQ Program targets funding to two specific national objectives.

ISTEA fosters a needs-based process for identifying funding priorities within States and promotes a more strategic use of Federal funds through better planning, new partners, enhanced public involvement, and greater empowerment of States and MPOs. The CMAQ program is a unique program within ISTEA because it directs funds at two specific national objectives: attainment of the national ambient air quality standards (NAAQS) and relief from the congestion that plagues more and more of our urban and rapidly growing suburban areas. By providing funding to assist States and metropolitan areas to meet the mandates of the Clean Air Act Amendments (CAAA) of 1990, CMAQ has proven to be a significant development in the overall effort to integrate transportation planning with programs to improve air quality.

B. CMAQ's flexibility has helped air quality and congestion relief.

The CMAQ program has proven to be ISTEA's most flexible program, although it constitutes only about 5 percent of the overall funding available through ISTEA's six-year authorization period. Through its almost five-year history, this innovative program has accounted for $1.6 billion of the $2.9 billion (55 percent) in Title 23 funding that was used for transit projects, even though the overall program amount is smaller than other flexible funding programs in the ISTEA. In addition to transit, CMAQ has funded projects ranging from San Francisco's

Incident Management Program, to the rail/truck intermodal facility in Stark County, Ohio, to New York's Red Hook Barge intermodal project, to an award-winning parking management program in Glendale, California, which help employers reduce emissions by encouraging their employees to consider options to driving alone to work each day.

These and other CMAQ-funded projects provide a wide range of benefits in addition to air quality improvement. Other benefits such as congestion relief, improved mobility and accessibility for both people and goods, and promotion of energy efficient transportation options can be attributed to the availability of the CMAQ program funds to States and MPOs. And best of all, CMAQ allows States and MPOs to decide for themselves which projects they will invest in to meet the goals of the program. CMAQ-funded projects have been critical for some nonattainment areas to satisfy tests for conformity of transportation plans to State air quality plans. CMAQ funding may also be necessary to fund transportation control measures contained in the air quality plans. While there is a wide range in air quality emissions reductions from CMAQ projects, all have air quality benefits.

CMAQ flexibility has allowed States to fund many new efforts and projects which go beyond traditional highway and transit infrastructure, and such innovation has been the hallmark of the CMAQ program. CMAQ funds have been used to purchase clean fueled buses in Kenosha, Wisconsin; and electric vehicles in Boston, Massachusetts; to establish Inspection and Maintenance programs in Indiana; and the Clean Air Campaign in Phoenix: all programs designed to reduce emissions from motor vehicles and help States attain the Federal clean air standards.

The congestion relief benefits of the CMAQ program have been substantial. Houston's TranStar traffic management and control system uses cutting edge technology to manage over 300 miles of freeway and over 100 miles of high occupancy vehicle lanes. It includes ramp

metering, an incident management program, and signal coordination on a region wide basis. This and other types of Intelligent Transportation Systems projects have been increasingly funded under the CMAQ program as part of DOT's Operation Timesaver initiative. The CMAQ program has funded HOV lanes in Los Angeles and shared-ride services and demand management programs in Minneapolis. In addition, the CMAQ program promotes alternative travel options as envisioned by the Congress in ISTEA, such as bicycle lanes in Illinois and a pedestrian walkway in downtown Cleveland to its Gateway Complex, home to the Cleveland Cavaliers and Indians.

C. CMAQ did experience start-up problems.

1. Obligation rates were initially low.

Nonetheless, the CMAQ program was not without its initial start-up problems. Back in 1992, the first year of the CMAQ program, just 42 percent of CMAQ funds ($809 million) were obligated. In 1993 this figure increased to 62 percent ($600 million) and by 1994, the obligation rate soared to 85 percent ($815 of $962 million). Recognizing this problem early on, we established a goal that, in three years, CMAQ funds should be obligated at comparable levels to the much larger programs of the National Highway System and the Surface Transportation Program. We achieved that goal, with the 1995 obligation levels reaching 99 percent.

2. Institutional mechanisms for selecting projects had to be developed.

Another area that proved to be a unique opportunity with CMAQ funding was that States and MPOs had to establish institutional mechanisms to open up the funding process to a much broader constituency than had been the case in the past or which is currently the case with other funding programs under ISTEA. The development of strong local processes to develop funding priorities under CMAQ, including the development of new partnerships between State and local agencies, both public and private, has taken some time and a great deal of effort at the Federal,

State and local levels, and has succeeded with formal selection processes in many MPOs. Communication among transportation and air quality planning agencies at all levels has improved and new players are involved. Examples of new participants include air quality and energy agencies, community/private employer transportation management associations, and national consortia such as the Natural Gas Vehicle Coalition. The Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Environmental Protection Agency have worked very closely together on CMAQ implementation, including development and subsequent revision to our program guidance, a major review of the program in 1994, and on individual projects. We are pleased with the tremendous progress made to date and are hopeful that, in the spirit of ISTEA, such inclusive processes for prioritizing investments extend to other ISTEA programs.

Many States have been willing to cede some of their traditional authority to reach out to local governments, the private sector, and other transportation stakeholders and are starting to realize the benefits of the process of inclusion in transportation investment decisions. States are now getting used to the idea of directing investments toward achieving not only Federal, but also State and local goals through transportation investments funded with CMAQ and other ISTEA funds.

D. NHS Act Changes

Under ISTEA, as nonattainment areas were redesignated to attainment, these areas were to lose CMAQ funding. In response to legitimate complaints from a number of affected areas, the Congress and the Administration agreed that this, in effect, constituted punishing such places for their good work to improve air quality. We are pleased with the changes to the CMAQ program which were included in the National Highway System Designation Act of 1995 (NHS Act).

Due to the NHS Act provisions, funding for maintenance areas is now allowable. Further, the fund distribution factors used to apportion funds to each State for FY 1996 and FY 1997 are frozen to reflect the nonattainment area status in FY 1994 including any changes that occurred during that year. These two changes allow newly designated "maintenance" areas to continue to receive and use CMAQ funds in order to help them maintain their new status as attainment areas. These areas are still subject to other CAAA requirements such as conformity, so we think it makes sense to allow them to receive CMAQ funds to continue their good work in improving air quality.

E. CMAQ program improvements continue to evolve.

Improvements to the CMAQ program continue to evolve as we near the end of ISTEA's authorization period. Our July 1995 guidance revision, later affirmed by the current March 1996 update, provides for more extensive public outreach and education efforts, funding of experimental transportation projects and programs, and expansion of eligibility for incentive programs to encourage the use of transit, ridesharing, and other alternative modes of transportation.

We have provided much flexibility, consistent with the principles of sound program management. Most recently, we initiated a joint interagency effort with FTA and EPA to reduce oversight and coordination requirements at the Federal level. In seven of our nine regions, we now have memoranda of agreement to streamline the project review process, allowing minimal oversight and more timely review.

F. CMAQ program received broad-based support from communities.

The flexibility CMAQ has allowed has engendered a great deal of support and involvement by the public and private sectors, as well as by community and environmental groups and other

stakeholders in the transportation system. Further, CMAQ funds have leveraged both public and private sector funding for transportation investments far in excess of Federal matching requirements. And finally, emission reductions from transportation sources are occurring as a result of CMAQ-funded projects, thus helping the Nation's nonattainment areas achieve the NAAQS in accordance with the CAAA mandates.

This popular support for the CMAQ program was reinforced during the past three months at FHWA-sponsored focus groups held in three locations throughout the country: Dallas, Los Angeles, and New York. Participants of the focus groups were nearly unanimous in their support for continuance of the CMAQ program. They cited several distinct advantages of the CMAQ program and particularly appreciated the "process," or indirect benefits, the program fosters. They noted that CMAQ represents a separate funding program dedicated to making improvements and innovations in transportation, and the program's unprecedented flexibility, improving the way transportation decisions are made. They also said the program has invited new players to the table who have participated substantially in the planning process. States have continued to incorporate cutting edge congestion relief and air quality beneficial projects in their transportation plans and programs. They agree that the CMAQ program has served as a catalyst for better integration of transportation and air quality planning, and that CMAQ is serving as a vital funding source for needed projects that would otherwise go unfunded. We have heard similar statements at the DOT-sponsored regional forums.

II. Program Delivery

A. Scope of the Program under ISTEA

The ISTEA provided authorizations for highways, highway safety, and mass transportation for a 6-year period. It significantly increased the Federal investment, with average

annual obligations in the ISTEA period thus far of $19.5 billion--as compared to a $14.3 billion average for each of the five years preceding ISTEA.

Title I (Surface Transportation) of ISTEA provided authorizations for close to 50 specific programs, ranging from the larger Interstate, National Highway System, Surface Transportation and Bridge programs to the smaller Recreational Trails, Scenic Byways and Ferry Boat programs. Title I also recognized the strong national interest in the Nation Highway System by requiring AASHTO design standards for NHS projects, while providing additional flexibility to the States to use State-adopted design standards for non-NHS projects.

In addition to traditional highway and bridge construction and reconstruction, there is a tremendous diversity of projects under ISTEA with a wide range of activities eligible for Federal-aid highway funds. Several examples of this diverse program include:

* Activities that enhance the environment, such as wetland banking, mitigation of damage to wildlife habitat, historic preservation, a wide range of bicycle and pedestrian projects and highway beautification,
* Capital costs for transit projects eligible for assistance under the Federal Transit Act,
* Congestion Mitigation and Air Quality Improvement projects directed toward attainment of the national ambient air quality standards,
* Start-up costs for traffic management and control systems, and
* Providing direct funding or loans for the construction of toll highways.

These few examples are indicative of the diversity of the Federal-aid highway program and also the challenges we face in delivering the program nationwide to States with a wide range of transportation needs.

FHWA has taken various initiatives to meet these program delivery challenges. Several of

the more significant involve our stewardship of the program, which we define as the process of providing program oversight and accountability. ISTEA provided significant flexibility for the States to exempt FHWA from direct design and construction oversight responsibility for many of the less significant Federal projects. Due to our longstanding partnership with the States and knowledge of their program stewardship abilities, we strongly encouraged the States to make maximum use of this oversight exemption.

In addition, during 1991, the FHWA Strategic Management Committee adopted a new "Statement of Operational Philosophy" for the agency. This new philosophy established process review/product evaluation procedures as the agency's primary mode of operation in carrying out its program oversight responsibilities, as opposed to the long tradition of detailed project-by-project reviews.

These significant changes have enabled us to be involved in oversight of the more significant Federal-aid highway projects while allowing States, with their very competent staffs, to assume design and construction responsibility for the great majority of less significant and less complex projects. The additional staff time available to FHWA due to the reduced oversight has been used to gain technical expertise and provide specific technical assistance to the States.

One of the most significant factors contributing to the effective delivery of the Federal-aid highway program by the FHWA is the close working relationship with our State partners. We have devolved decisionmaking authority within the FHWA so that our division offices have authority for essentially all program decisions. We continue to improve our program management. In our western regions we have established a Resource Center to consolidate administrative functions in one location to serve various regions, instead of having duplicate staff in each individual regional office. A similar initiative has been approved for the eastern regions.

We are also currently establishing four metropolitan offices in the cities of New York, Philadelphia, Chicago, and Los Angeles that will be staffed by both FHWA and FTA personnel to better assist these large cities in developing their complex, intermodal, urban transportation programs. Through extensive coordination with FTA and the National Highway Traffic Safety Administration (NHTSA), we are also now working to co-locate our field regional offices at one location to better serve our partners and customers with "one-stop shopping."

We will continue these valuable initiatives and constantly strive to find others to improve and streamline the process of delivering the Federal-aid highway program to the States. With the approach of reauthorization of the transportation program next year, we are considering various initiatives to facilitate improved program delivery. These include consolidating some of the close to 50 individual programs, which would simplify the overall transportation program for the States and provide more overall program flexibility, while maintaining the critical program components.

B. Innovations

1. Innovative Contracting

Since 1990, the FHWA has been evaluating promising nontraditional contracting methods designed to enhance the quality of our highways and limit the impacts of highway construction on road users under Special Experimental Project No. 14 (SEP-14). While Federal statutes and regulations set forth specific requirements for Federal-aid highway projects, we have been able to operate within the flexibility afforded under these laws. These techniques provide States the opportunity to accelerate projects by creating new ways to overcome construction and administrative barriers. We have now approved for non-experimental use three of the four techniques originally identified under this project: cost-plus-time bidding, lane rental, and warranty clauses.

We have encouraged the use of cost-plus-time bidding and lane rental provisions for critical projects on busy routes where congestion and delay from construction would be most heavy. These methods incorporate a contractor's bid for contract time, with an associated cost, into the overall low bid determination. This means that the contractor must schedule the work so as to minimize the time the traveling public is exposed to construction delays. Contractors have responded to these time incentives with great success. For example, during the reconstruction of California freeways after the Northridge Earthquake, we enabled CALTRANS to use cost-plus-time bidding technique on 10 reconstruction projects. This technique reduced the total contract time for all 10 projects by 450 days. CALTRANS estimated that cost-plus-time bidding saved an estimated $47.7 million in costs to users of these heavily-traveled highways.

Before we began our SEP-14 initiative, the use of warranties on Federal-aid projects was greatly restricted. The rationale for this restriction was that warranties could indirectly result in Federal-aid highway funds paying for maintenance costs, which is generally prohibited. For Federal-aid projects off the National Highway System, States that have exempted themselves from Federal oversight may use warranties in accordance with State procedures.

Under SEP-14, 11 States experimented with warranties on Federal-aid highway projects, with the objective of encouraging improved quality and contractor accountability without shifting the maintenance burden to the contractor. Many States believe that warranties will contribute to longer lasting highway products and will benefit small or specialty contractors and provide new products. We believe that warranties will help prevent unnecessary maintenance and repair costs resulting from premature failures of highway projects due to poor construction methods or low quality materials. As a result, in April of this year we amended our regulations to give States the option to include warranties in contracts for projects on the National Highway System.

The fourth technique, design-build, continues to enjoy strong support from State highway agencies. Under this contracting method, design and construction are performed through a single procurement, so construction can begin before the last design details are finalized. The design-build process has an advantage over traditional project development by providing contractors the maximum flexibility for innovation in selecting design and construction methods. From the States' perspective, the potential time savings is a significant benefit. While the FHWA does not believe that the design-build method will become the preferred form of project delivery in the highway program, we recognize that it is a valuable tool for advancing critical projects quickly, and we will continue to evaluate this experimental technique.

2. Innovative Financing

Despite record levels of Federal transportation investment in recent years, our Nation's infrastructure needs continue to grow. It is clear that traditional public sector financing alone cannot fund all necessary improvements to our Nation's highways and bridges. Through our innovative finance initiatives, we are giving States greater flexibility and authority to develop creative new ways of financing infrastructure projects. We have lifted restrictions in our current financing method that slow projects, increase costs, and discourage private investment. I am pleased that the Congress shares our support for these new financing methods and included several of the innovative financing techniques tested by the States in the NHS Designation Act.

Investment tools, such as crediting private contributions to a project as a State's matching share, make our limited Federal funds stretch much further. Cash flow tools like partial conversion of advance construction--so States need not accumulate the entire Federal share of a project before contruction begins--move projects to construction sooner and lower costs by reducing the interest burden on loans or bonds.

Another technique we have developed to accelerate projects and ease administrative burdens is the Surface Transportation Program (STP) Simplification pilot program. States approved under this pilot can bundle together several STP-eligible projects and commit Federal funds to those projects in a single obligation.

The States' response to these new financing initiatives has been impressive. The FHWA has approved more than 75 projects in 32 States worth more than $4.5 billion. These strategies have made a real difference and can be measured in terms of $1.2 billion in increased private and non-Federal public infrastructure investment to date. Because of the increased flexibility these innovative financing methods offer to States, many projects that were stalled under conventional financing methods will advance to construction an average of two years faster than originally scheduled.

The State Infrastructure Bank Pilot Program authorized in the NHS Act holds great promise for exploring a broad range of financing concepts, including loans and credit enhancements. Therefore, we are pleased that the Congress, in the DOT appropriations act, has provided additional funding and expanded States' opportunities to participate in this new pilot.

C. Streamlining Regulations and Administrative Procedures

To maintain our position in the world economy, we must maintain a safe and efficient national transportation system. We need strong Federal leadership to do so. Efficient national cargo movement is key to our ability to benefit from expanding trade opportunities. Truckers rely on national uniformity in facilities and regulatory standards when operating throughout the country. At the same time, we recognize the need to ensure that our regulations are not unduly burdensome and we are committed to the concept of performance-based regulations. Greater reliance on performance management will enable us to maintain accountability for our Nation's

roads and motor carriers while reducing cumbersome rules that delay improvements and add to costs.

Over the past year, we have eliminated or revised a number of regulations so as to streamline and improve the delivery of the programs we administer. We have undertaken a comprehensive review of our regulations and we have eliminated redundant and obsolete rules in the areas of motor carrier safety, right-of-way, equal employment opportunity on Federal-aid construction contracts, and project programming. We have also eliminated outdated and unnecessary regulations in our public lands highways program.

Minimizing the burdens of ISTEA's planning requirements has been another one of our priorities. In the initial effort to develop and implement our joint planning regulations, the FHWA and the FTA launched a proactive outreach program, soliciting input from States, MPOs and transit agencies. Since then, we have sought to rely on guidance, rather than a prescriptive one-size-fits-all regulatory approach, to strengthen and support cooperative planning processes. We recognize that the States, MPOs, and transit operators are sources for innovative ideas that can benefit their peers and the Federal effort. We have sought to learn from these partners by disseminating information on their best practices to other regions of the country, encouraging collaborative efforts, and emphasizing a customer service culture.

We have also made changes in our administration of project authorization and execution agreements, which are required for each Federal-aid highway project. We have revised our procedures in this area and are encouraging States to use this new process, where the project authorization and project agreement actions are combined into a single document. The use of an electronic version of the document, including an electronic signature, is now permitted to further simplify and expedite processing.

We have also sought and obtained legislative relief from statutory mandates that unnecessarily burdened States or private industry, including requirements for specific expenditures of scarce Federal-aid highway funds on recycled paving materials and for pre-employment alcohol testing of commercial motor vehicle drivers.

1. Motor Carrier and Highway Safety

In the area of motor carrier safety, we are conducting a comprehensive "zero-base" review of all of our regulations to ensure clarity, fair treatment, and national uniformity while eliminating redundant or outdated rules. In the nearly 60 years since the first Federal motor carrier safety regulations were issued in 1937, numerous new rules have been added and the existing ones amended in response to safety concerns. Addressing these issues individually over time has resulted in some rules that may be overly complex and impractical in today's environment. The motor carrier industry is changing, and our regulations must keep pace with technological and highway safety advancements in the areas of highway construction, vehicle design, and driver knowledge and ability.

Jointly with NHTSA, we have established a 16-State pilot program that is testing a performance-based approach to the Section 402 highway safety grant approval process. In this program, participating States are invited to set their own performance goals and measures and to develop unique strategies for meeting them, rather than conforming to a single, Federal standard. This pilot was recently extended because of the States' great interest in it.

2. Environmental Processes

In developing ways to streamline the environmental approval process, we have sought methods that can meet our dual objectives in this area of advancing necessary and important transportation improvements while giving due consideration to valid environmental concerns. We

have targeted our streamlining efforts on the project approval process, and have been able to provide some effective relief administratively. We hope to do even more in this area.

The highway project development process requires compliance with numerous Federal environmental laws, regulations, and executive orders. Satisfying these multiple mandates is sometimes challenging. The FHWA, Army Corps of Engineers, Environmental Protection Agency, National Marine Fisheries Service, and the Fish and Wildlife Service have worked over the last several years to merge the processes for complying with the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act. Interagency agreements on this subject are in place in most regions of the country. Additional opportunities exist for streamlining other aspects of the environmental review process, and we are currently exploring those options.

Our proposed delegation of the review of draft environmental impact statements to the FHWA's field offices would avoid concurrent review by FHWA regional and headquarters staffs, thus freeing our headquarters employees to assist in the preparation of only the more complex and controversial environmental impact statements. We have already received some modest results from a pilot of this initiative. To ensure that our field managers are well equipped to carry out these new responsibilities, each has attended an environmental leadership seminar in the last two years.

One approach we have taken to deal efficiently with environmentally uncomplicated projects is the use of programmatic approaches, where the environmental clearances are handled by those close to the project, using established but simplified procedures. Over the last several years, we have extensively implemented programmatic approaches for using categorical exclusions under NEPA, for making Section 4(f) approvals involving small uses of park land and other protected resources, and for addressing adverse impacts on historic resources, such as

historic bridges, as required under Section 106 of the National Historic Preservation Act. We have also worked extensively with the Army Corps of Engineers to make maximum use of nationwide and general Section 404 permits.

For example, our Ohio division office adopted a programmatic approach to categorical exclusions two years ago. Since then, Ohio has saved over 10,000 hours per year in State staff time. At our division office, we estimate that we have saved over 800 hours per year. Overall, the FHWA has been removed from project involvement on 85 to 90 percent of all Federal-aid highway projects, including most local projects. This approach has had similar dramatic results in States across the country. We will consider employing a similar approach on a national scale to maximize program efficiencies.

Through our own administrative actions, and with Congress' help in the NHS Designation Act, we have streamlined the transportation enhancements program, because we recognize that the same administrative rules and requirements that apply to a multi-million dollar highway construction project may be inappropriate for an enhancements project costing only a few thousand dollars. Our goal with transportation enhancements has been to make the implementation of these small, environmentally friendly projects as simple as possible. For example, from the perspective of meeting the requirements of NEPA, virtually all of the enhancements projects have been advanced as categorical exclusions. We have also adopted simplified procedures for transportation enhancements dealing with planning requirements, land acquisition, labor issues, and contracting.

D. Conclusion

As we wind up our extensive outreach meetings this year prior to the reauthorization of ISTEA, we first commend the leadership and the members of this Committee for their

cooperation in implementing the truly landmark act, ISTEA. Our outreach has shown a wide range of support for continuing many of ISTEA's programs, with certain reforms that build on the successes. Clearly, we have all heard the success stories and also many beneficial suggestions for changes. But most importantly, we have heard the call for a continued Federal role in guiding our surface transportation programs into the next century. With our new ISTEA partners, we believe we can deliver a program that carries out the vision of this Committee.

In implementing ISTEA, we have found that the use of pilot programs has been one of our best methods for exploring program delivery improvements. Pilots give State and local officials even greater flexibility to ensure that transportation investments meet the varied and unique needs of their communities while maintaining national transportation priorities such as safety, environmental protection, clean air, and improved mobility for all of our citizens. In closing, I reiterate our support for the CMAQ program and commend its benefits in reaching our national objectives of cleaner air and less congestion. We are committed to building on the innovations we have explored in ISTEA.and look forward to working with this Committee and our other partners in further improving these programs in reauthorization. I would be pleased to answer any questions you may have.