

June 1, 2009

Hon. Henry A. Waxman, Chairman
Committee on Energy and Commerce
U.S. House of Representative
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Joe Barton
Committee on Energy and Commerce
U.S. House of Representatives
2325A Rayburn House Office Building
Washington, DC 20515

Hon. Edward J. Markey
Subcommittee on Energy and Environment
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Fred Upton
Subcommittee on Energy and Environment
2325A Rayburn House Office Building
Washington, DC 20515

Re: America Clean Energy and Security Act (ACESA) and Transportation Planning

Dear Chairman Waxman, Ranking Member Barton, Chairman Markey, and Ranking Member Upton:

We are writing to express our concerns regarding the transportation planning provisions in Section 222 of HR 2454, the American Clean Energy and Security Act (ACESA). We request that any changes to transportation planning requirements in Title 23 of the U.S. Code be considered as part of the reauthorization of the multi-year surface transportation legislation, not in ACESA. As practitioners responsible for carrying out the federally required transportation planning process, we support Congressional efforts to reduce transportation-related greenhouse gas emissions, but believe that planning changes must be consistent with and made part of the transportation planning provisions in Title 23. We do not support creation of a new, parallel set of transportation planning requirements in the Clean Air Act (CAA).

As you know, the federal transportation planning process in Title 23 is very detailed and requires many opportunities for public comment on environmental and other issues. This transportation planning process is carried out under guidance and rules administered by the USDOT, and in consultation with the EPA when the law requires. This longstanding, cooperative relationship between USDOT and EPA should be retained with respect to planning measures that include additional climate change-related features added by Congress. Creating a new parallel transportation process under the CAA, led by EPA would create major difficulties in the transportation planning process. We have several specific concerns with this approach, as outlined below.

1. Because Section 222 is drafted as an amendment to the CAA, the citizen lawsuits provision of the CAA could be used to enforce it. This is a serious concern for some of our members. Millions of dollars have been spent and many years of delay have been added to transportation solutions due to the time it takes to address lawsuits filed under the CAA for charges that are outside the authority of MPOs to enforce. We believe that adding a new opportunity to slow delivery is not in the interest of solving our transportation needs, nor is it needed to achieve our greenhouse gas reduction goals.

2. Each state would be required under ACESA to submit goals for transportation-related GHG emissions reduction as part of the state transportation plan or the MPO transportation improvement program (TIP) document, which the EPA Administrator, in consultation with the Secretary, would certify. The language is ambiguous about whether the goals are to be submitted as part of each TIP or each state transportation plan. However, failure to be certified requires the state or the MPO to resubmit a plan within one year. Certification may delay the entire state plan or TIP, thus adding an additional year or more of delays to needed investments, including those that will materially benefit air quality and energy consumption.

3. We do not believe that a timeframe of one year from the promulgation of final regulations by the EPA will provide adequate time for many MPO's to fulfill the requirements under ACESA. Currently, 190 MPOs are located in metro areas that have always been in attainment of National Ambient Air Quality Standards under the CAA, and as such have very limited experience with the CAA and the technical and organizational aspects of air quality planning. Additionally, the next census may result in the designation of more than 40 new MPOs, which will need time to establish and organize themselves, employ new staff, and learn the current planning requirements.

4. ACESA makes the EPA Administrator the lead on certifying that the plan would achieve the goals. To be consistent with current transportation planning law and the air quality conformity process, the USDOT Secretary should be the lead for certifying the plan, in consultation with the EPA Administrator.

5. We are concerned about the impact of sanctions for failure to submit a plan. Under ACESA, failure to submit a plan could result in "highway sanctions" under Section 179(b)(1) of the CAA, which would preclude the affected State or metropolitan area from obligating federal dollars to projects under Title 23. Providing the EPA with additional sanction authority for failure to submit a plan may, again, add delay to needed transportation investments.

6. ACESA requires a lengthy rulemaking process to establish standards for use in developing goals, plans, and strategies and monitoring progress for such goals. As you know, several states are pursuing their own goals and strategies to address climate and there is concern that additional federal statutes and regulations could conflict with or confuse plans at the state level. Furthermore, since the bill requires states to develop their own goals, it does not make sense for the federal government to impose strict standards or methodologies governing this process.

We also note that ACESA establishes a competitive grant program to support the development of goals, activities, and implementation of the reduction plan. We support inclusion of these resources but recommend that a reliable funding stream be established for this activity. Planning resources have been severely diminished over the last few years due to budgetary rescission included in appropriations bills. Further, SAFETEA-LU includes an additional \$8.5 billion rescission to occur at the end of the current fiscal year. These rescissions, which now impact MPO planning funds, have made it challenging to carry out the current planning functions, and without additional resources to meet potential new emission reduction requirements these challenges will grow.

Again, we feel strongly that any new requirements and responsibilities placed upon States and MPOs to address reductions of transportation related emissions be considered as part of the reauthorization of the multi-year surface transportation legislation. This reauthorization provides the optimal opportunity to ensure that surface transportation decision making furthers national energy independence, reduces greenhouse gas emissions, and transitions the nation to a clean energy economy within the context of other national objectives the transportation system is expected to meet.

We look forward to working with both the Energy and Commerce Committee and the Committee on Transportation and Infrastructure to achieve the important goals of addressing climate change and an improved transportation planning process that leads to the development of a world-class transportation system. Thank you for consideration of our views.


Sincerely,



DeLania Hardy, Executive Director
Association of Metropolitan Planning Organizations



Matthew Chase, Executive Director
National Association of Development Organizations



John Horsley, Executive Director
American Association of State Highway and Transportation Officials