



August 22, 2022

Mr. Gary Jensen
Office of Natural Environment
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Ms. Dawn Horan
Office of the Chief Counsel
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Notice of Proposed Rulemaking, Federal Highway Administration; National Electric Vehicle Infrastructure Formula Program; Docket No. FHWA-2022-0008; 87 Fed. Reg. 37262; (June 22, 2022)

Dear Mr. Jensen and Ms. Horan:

The U.S. Chamber of Commerce appreciates the opportunity to comment on the Federal Highway Administration's (FHWA) notice of proposed rulemaking (NPRM) pertaining to the implementation of the National Electric Vehicle Infrastructure Formula Program (NEVI) created under the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58).

Effective implementation of programs such as NEVI and Charging and Fueling Infrastructure Program (CFIP) are important for realizing widespread adoption of electric vehicle (EV) technology. While the \$7.5 billion provided under IIJA is a significant down payment towards realizing a robust national EV charging network, the 500,000 chargers this funding is expected to support is just a fraction of the nearly 1.2 million chargers McKinsey estimates will be needed in order to realize a scenario where half of all vehicles sold by 2030 are emission-free.¹ Because significant investment will likely be needed in the future to fully realize the promise of EV transition, it is critical the Administration get the fundamentals of NEVI correct as this investment will set the course for future buildout of EV infrastructure.

¹ Building the electric-vehicle charging infrastructure America needs, April 18, 2022, Available at: <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/building-the-electric-vehicle-charging-infrastructure-america-needs>

The Chamber is pleased that FHWA adopted many of our recommendations within the recent “Request for Information on Development of Guidance for Electric Vehicle Charging Infrastructure Deployment” (86 FR 67782), including the suggested minimum distance between charging stations now in the NEVI guidance; as well as the required planning for operations and maintenance, a 150 kw minimum speed for charging stations, and the adoption of interoperable charging standards that are included in this NPRM.²

While the NPRM is a strong starting framework, we urge you to make changes that are necessary to both meet the requirements of IIJA and ensure that the NEVI program can help meet the United States’ growing needs for EV infrastructure. In that spirit, the Chamber offers the following comments on the NPRM:

- **NEVI Funding for Limited-Access Charging Stations is Necessary for Widespread Commercial Adoption.** One key to successfully realizing widespread adoption of EVs is utilization of the stations for both consumers and commercial businesses. Congress recognized this in IIJA when requiring that charging stations funded with NEVI funds be “open to the general public *or to authorized commercial motor vehicle operators from more than one company*” (emphasis added). This language explicitly allows access to NEVI-funded charging stations by multiple authorized commercial operators, and was adopted because Congress recognized that charging station availability along commercial vehicle routes is a necessary precondition for adoption of EVs by the commercial trucking industry. The NPRM requires that “charging stations must be available for use and sited at locations physically accessible to the public 24 hours per day, seven days per week, year-round.”³ This is contrary to the language in IIJA that permits access to NEVI-funded charging stations to a subset of authorized commercial operators and would make practical adoption of electric trucks in the near term on a limited basis, and in the long term on a widespread basis, extremely difficult. The Chamber recommends the proposed 23 CFR § 680.106(e) be amended as follows:
 - “(e) Availability. Charging stations must be available for use and sited at locations physically accessible to the public 24 hours per day, seven days per week, year-round *unless access is restricted to authorized commercial motor vehicle operators*. This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.”

This change will ensure that the intention of IIJA is met, and speed EV adoption by commercial vehicle operators that are willing to invest the necessary capital along with NEVI funds to establish some of the earliest EV charging locations along America’s roadways.

- **Greater Cybersecurity Safeguards are Necessary Given the Networking Requirements Under the NPRM.** Cyberspace remains the only domain where we ask private companies to

² <https://www.regulations.gov/comment/FHWA-2021-0022-0366>

³ 87 Fed. Reg. 37277

defend themselves against bad actors that range from the individual to the nation state. The Chamber believes the federal government's involvement in cybersecurity is increasingly necessary given recent cyberattacks, and a well-constructed policy can promote national and economic security, resilience, transparency, accountability and trust among public and private organizations. However, a well-constructed policy must be developed collaboratively in a way that balances the interests of policymakers and businesses, consistent as not to allow vulnerabilities, and adaptable in a manner that accounts for the needs of the business and security of the network. Proposed section 680.106(h) requires states to implement physical and cybersecurity strategies consistent with their state EV Infrastructure Deployment Plans, and proposed section 680.114(c) requires that charging networks be capable of secure communications with electric utilities and energy management systems. While this interconnectivity is important, it also opens these critical infrastructure systems up to new cybersecurity vulnerabilities. As the National Renewable Energy Laboratory said in a 2021 report: "Physical and/or remote access to EV charging station components, including charge ports, power electronics, controllers, and local generation (e.g., PV and energy storage) could be paths to cause power fluctuations, leading to altered operations at the charging station, escalated privileges to administrative systems, exfiltration of financial information (including personally identifiable information), and reduced grid stability. One compromised EV supply equipment component can open the door to a variety of exploitable vulnerabilities... Vendor clouds have access to hundreds of chargers, and if compromised, can scale the attack surface exponentially."⁴ Additionally, as President Biden acknowledged in EO14028, Improving the Nation's Cybersecurity, "the United States faces persistent and increasingly sophisticated malicious cyber campaigns that threaten the public sector, the private sector, and ultimately the American people's security and privacy." These cyber threats are why secure communications between the charging network and grid, a secure software supply chain, adequate encryption, and other consistent, strong standards are critical. State deployment plans, while robust, are inconsistent from state-to-state and could add to the inconsistent patchwork of obligations businesses are forced to navigate while doing little to enhance cybersecurity. A single standard of cybersecurity developed in collaboration with industry should be set and required by all EV chargers funded by NEVI to ensure that critical infrastructure systems are not open to intrusion by bad actors. The Chamber recommends FHWA collaborate with the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency as well as an industry-based standard setting body such as SAE International to develop consensus-based cybersecurity standards for EV charging infrastructure. We welcome the opportunity to convene such a discussion.

- **Coordination and Consultation with Utilities Should be Mandatory Prior to Receiving NEVI Funding.** According to a 2019 study sponsored by the Department of Energy, between 2025 and 2050, growth in annual generation necessary to serve EV charging could exceed more than 10 Terawatt-hours and peak at more than 25 TWh (for perspective, the state of

⁴ Cybersecurity for Electric Vehicle Fast-Charging Infrastructure, July 2020, Available at: <https://www.nrel.gov/docs/fy21osti/75236.pdf>

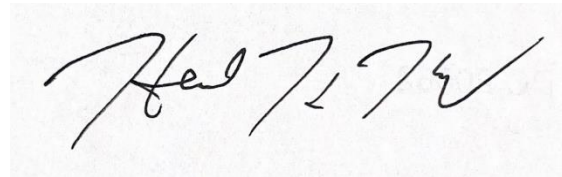
New Mexico currently consumes about 25 TWh annually).⁵ Proper planning and coordination to ensure additional power demand associated with EV charging can be reliably served is essential. While the NEVI guidance and the NPRM state the importance of, and highly suggest that consultation occur, they do not indicate when that consultation should occur. We recommend that as precondition of NEVI funding, DOT require states to undertake analysis in coordination with relevant utilities to affirm their ability to serve additional charging loads well into the future. This coordination should occur in a streamlined manner that ensures rapid and efficient deployment of EV infrastructure.

Thank you for the opportunity to comment on this proposed rule. We look forward to continuing robust engagement with FHWA and DOT as the EV industry continues to move forward.

Sincerely,



John Drake
Vice President
Transportation, Infrastructure,
and Supply Chain Policy
U.S. Chamber of Commerce



Heath Knakmuhs
Vice President and
Policy Counsel
Global Energy Institute
U.S. Chamber of Commerce

⁵ U.S. DRIVE Grid Integration and Tech Team and Integrated Systems Analysis Tech Team Summary Report on EVs at Scale and the U.S. Electric Power System, November 2019, Available at: <https://www.energy.gov/sites/prod/files/2019/12/f69/GITT%20ISATT%20EVs%20at%20Scale%20Grid%20Summary%20Report%20FINAL%20Nov2019.pdf>